

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(1) INTRODUCTION/901. Landfill tax.

LANDFILL TAX

1. THE CHARGE TO LANDFILL TAX

(1) INTRODUCTION

901. Landfill tax.

A tax, known as landfill tax, is charged in accordance with Part III of the Finance Act 1996¹. The tax is under the care and management of the Commissioners for Her Majesty's Revenue and Customs².

¹ Finance Act 1996 s 39(1). In Pt III (ss 39-71), 'tax' means landfill tax: s 70(1). Sections 64-70 apply for the purposes of Pt III: s 70(4). A reference to Pt III includes a reference to any order or regulations made under it and a reference to a provision of Pt III includes a reference to any order or regulations made under the provision, unless otherwise required by the context or any order or regulations: s 70(3).

² Finance Act 1996 s 39(2). In Pt III, 'Commissioners' means the Commissioners for Her Majesty's Revenue and Customs: s 70(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see **CUSTOMS AND EXCISE; INCOME TAXATION**. See also **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 13. References in any enactment, instrument or other document to the Commissioners of Customs and Excise or to customs and excise must now be taken to be references to the Commissioners for Her Majesty's Revenue and Customs, and references to a customs officer or an officer as defined by the Customs and Management Act 1979 s 1(1) must now be taken to be references to an officer of Revenue and Customs: see the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(2) CHARGE TO TAX/902. Charge to tax.

(2) CHARGE TO TAX

902. Charge to tax.

Landfill tax¹ is charged on a taxable disposal². A disposal is a taxable disposal if:

- 1 (1) it is a disposal of material as waste³;
- 2 (2) it is made by way of landfill⁴;
- 3 (3) it is made at a landfill site⁵; and
- 4 (4) it is made on or after 1 October 1996⁶.

For this purpose a disposal is made at a landfill site if the land on or under which it is made constitutes or falls within land which is a landfill site at the time of the disposal⁷.

1 As to the meaning of 'landfill tax' see PARA 901.

2 Finance Act 1996 s 40(1).

See generally *FL Gamble & Sons Ltd v Customs and Excise Comrs* [1998] V & DR 481, L0004 (disposal of waste 'by way of landfill'). See also *Customs and Excise Comrs v Parkwood Landfill Ltd* [2002] EWCA Civ 1707, [2003] 1 All ER 579, [2002] STC 1536 (material disposed of for recycling not liable to landfill tax); *Customs and Excise Comrs v Ebbcliff Ltd* [2004] EWCA Civ 1071, [2004] STC 1496 (exemptions and restoration). See also PARA 903 for prescribed landfill site activities treated as disposals.

3 Finance Act 1996 s 40(2)(a). In order for there to be a taxable disposal, all four conditions must be met at the same time, which is the time of disposal: *Customs and Excise Comrs v Parkwood Landfill Ltd* [2002] EWCA Civ 1707, [2003] 1 All ER 579, [2002] STC 1536.

A disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material: Finance Act 1996 s 64(1). See *Waste Recycling Group Ltd v Revenue and Customs Comrs* [2008] EWCA Civ 849, [2008] All ER (D) 300 (Jul), [2009] STC 200 in which the relevant intention was not that of the original producer of the material, but that of the landfill site operator which had acquired title to the material. The fact that the person making the disposal or any other person could benefit from or make use of the material is irrelevant: Finance Act 1996 s 64(2). Where a person makes a disposal on behalf of another person, for the purposes of s 64(1), (2) the person on whose behalf the disposal is made is treated as making the disposal: s 64(3). The reference in s 64(3) to a disposal on behalf of another person includes references to a disposal: (1) at the request of another person (s 64(4)(a)); and (2) in pursuance of a contract with another person (s 64(4)(b)).

'Material' means material of all kinds, including objects, substances and products of all kinds: s 70(1). As to consideration in cases decided under the Control of Pollution Act 1974 and the Environmental Protection Act 1990 of the meaning of 'a disposal of material as waste' see *ICI Chemicals and Polymers Ltd v Customs and Excise Comrs* [1998] V & DR 310, L00002; *NSR Ltd v Customs and Excise Comrs* L00007. As to the meaning of 'waste' under the Control of Pollution Act 1974 Pt I (ss 11-30) and the Environmental Protection Act 1990 Pt II (ss 29-78) see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 623.

4 Finance Act 1996 s 40(2)(b). See also note 3.

A 'landfill disposal' is a disposal of material as waste (s 70(2)(a)), and made by way of landfill (s 70(2)(b)).

There is a disposal of material by way of landfill if it is deposited on the surface of land or on a structure set into the surface (s 65(1)(a)), or if it is deposited under the surface of land (s 65(1)(b)). 'Land' includes land covered by water where the land is above the low water mark of ordinary spring tides: s 65(7). Section 65(1) applies whether or not the material is placed in a container before it is deposited: s 65(2). Section 65(1)(b) applies whether the material is covered with earth after it is deposited (s 65(3)(a)) or is deposited in a cavity (such as a cavern or mine) (s 65(3)(b)). 'Earth' includes similar matter (such as sand or rocks): s 65(8). If material is deposited on the surface of land (or on a structure set into the surface) with a view to it being covered with earth the disposal must be treated as made when the material is deposited and not when it is covered: s 65(4).

An order may provide that the meaning of the disposal of material by way of landfill (as it applies for the time being) is to be varied: s 65(5). At the date at which this volume states the law no such order had been made under s 65(5). An order under s 65(5) may make provision in such way as the Treasury thinks fit, whether by amending any of the provisions of s 65(1)-(4) or otherwise: s 65(6). In *FL Gamble & Sons Ltd v Customs and Excise Comrs* [1998] V & DR 481, L00004, material to be converted into 'manufactured soil' was held to be waste at the time it was brought onto the site for conversion and to have been disposed of by way of landfill because: (1) it was disposed of; and (2) all of the ingredients of the Finance Act 1996 s 40 were present at the time of disposal. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Finance Act 1996 s 40(2)(c). See also note 3.

Land is a landfill site at a given time if at that time:

- 1 (1) a licence which is a site licence for the purposes of the Environmental Protection Act 1990 Pt II (ss 29-78) (waste on land: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 620 et seq) is in force in relation to the land and authorises disposals in or on the land (Finance Act 1996 s 66(a));
- 2 (2) a resolution under the Environmental Protection Act 1990 s 54 (land occupied by waste disposal authorities in Scotland) is in force in relation to the land and authorises deposits or disposals in or on the land (Finance Act 1996 s 66(b));
- 3 (3) a permit under regulations under the Pollution Prevention and Control Act 1999 s 2 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 186-188) is in force in relation to the land and authorises deposits or disposals in or on the land (Finance Act 1996 s 66(ba) (added by the Pollution Prevention and Control Act 1999 s 6(1), Sch 2 para 19));
- 4 (4) a disposal licence issued under the Pollution Control and Local Government (Northern Ireland) Order 1978, SI 1978/1049 (NI 19), Pt II (arts 3-36) (waste on land) is in force in relation to the land and authorises deposits on the land (Finance Act 1996 s 66(c));
- 5 (5) a resolution passed under the Pollution Control and Local Government (Northern Ireland) Order 1978, SI 1978/1049 (NI 19), art 13 (land occupied by district councils in Northern Ireland) is in force in relation to the land and relates to deposits on the land (Finance Act 1996 s 66(d)); or
- 6 (6) a licence under any provision for the time being having effect in Northern Ireland and corresponding to the Environmental Protection Act 1990 s 35 (waste management licences) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 662) is in force in relation to the land and authorises disposals in or on the land (Finance Act 1996 s 66(e)).

The Environmental Protection Act 1990 s 35, which defines a site licence for the purposes of the Environmental Protection Act 1990 Pt II (ss 29-78) (see head (1)), is repealed for England and Wales by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, art 1, Sch 21 Pt 1. As from a day to be appointed the Environmental Protection Act 1990 s 54 (see head (2)) is repealed by the Environment Act 1995 s 120, Sch 24. At the date at which this volume states the law no such day had been appointed.

Breach of the conditions of a licence which is a site licence for the purposes of the Environmental Protection Act 1990 Pt II (ss 29-78) does not invalidate the licence; the licence remains a valid site licence for the purposes of the Finance Act 1996 s 66 until it is suspended, and therefore disposals made at the landfill site may be taxable disposals within s 40: see *R v Harris* (2000) Times, 2 May, CA.

In respect of the Finance Act 1996 s 66(a) (see head (1)) see *Lancashire Waste Services Ltd v Customs and Excise Comrs* [1999] V & DR 490, L00008.

6 Finance Act 1996 s 40(2)(d). See also note 3.

7 Finance Act 1996 s 40(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(2) CHARGE TO TAX/903. Prescribed landfill site activities treated as disposals.

903. Prescribed landfill site activities treated as disposals.

If a prescribed landfill site activity¹ is carried out at a landfill site, the activity is to be treated:

- 5 (1) as a disposal at the landfill site of the material² involved in the activity³;
- 6 (2) as a disposal of that material as waste⁴; and
- 7 (3) as a disposal of that material made by way of landfill⁵.

The following landfill site activities have been prescribed⁶:

- 8 (a) the use of material to cover the disposal area⁷ during a short term cessation in landfill disposal activity⁸;
- 9 (b) the use of material to create or maintain a temporary haul road⁹;
- 10 (c) the use of material to create or maintain temporary hard standing¹⁰;
- 11 (d) the use of material to create or maintain a cell bund¹¹;
- 12 (e) the use of material to create or maintain a temporary screening bund¹² except where the material so used is naturally occurring material extracted from the landfill site in which the temporary screening bund is located¹³;
- 13 (f) the temporary storage of ashes (including pulverised fuel ash and furnace bottom ash)¹⁴;
- 14 (g) the use of material placed against the drainage layer or liner of the disposal area to prevent damage to that layer or liner¹⁵; and
- 15 (h) any other landfill site activity if in relation to that activity there is a requirement¹⁶ for a person to notify or give information or a requirement¹⁷ for a person to designate a part of a landfill site as an information area¹⁸, give information or maintain a record in respect of the area, and that requirement is not complied with¹⁹.

A landfill site activity is excluded from the above if, or to the extent that, it involves material that is or has been otherwise chargeable to landfill tax²⁰ or exempted from landfill tax²¹.

1 'Prescribed landfill site activity' means a landfill site activity prescribed in an order for the purposes of the Finance Act 1996 s 65A: s 65A(1) (s 65A added by the Finance Act 2009 s 119, Sch 60 para 2). Provision by such an order may be made in such way as the Treasury thinks fit: Finance Act 1996 s 65A(4) (as so added). An order may prescribe a landfill site activity by reference to conditions, which may, in particular relate to either or both of (1) whether the activity is carried out in a designated area of a landfill site; and (2) whether there has been compliance with a requirement to give information relating to the activity or the material involved in the activity, including information relating to whether the activity is carried out in a designated area: s 65A(5), (6) (as so added). An order may amend or otherwise modify Pt III (ss 39-71) (as amended: see PARA 901 note 1) or any other enactment relating to landfill tax, but may not alter any rate at which landfill tax is charged: s 65A(7) (as so added). Section 65A(5)-(7) does not limit the generality of s 65A(4): s 65A(8) (as so added). A 'designated area' means an area of a landfill site designated in accordance with an order under s 65A(1) or regulations under Sch 5 Pt 1 (see PARA 970 et seq): s 65A(9) (as so added). As to the meaning of 'landfill tax' see PARA 901. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Provision which appears to the Treasury to be necessary or expedient in connection with provision made by order under s 65A(1) may also be made by order: s 65A(3) (as so added).

A 'landfill site activity' means any of the following descriptions of activity, or an activity that falls within any of the following descriptions: (a) using or otherwise dealing with material at a landfill site; and (b) storing or

otherwise having material at a landfill site: s 65A(9) (as so added). As to the meaning of 'landfill site' see PARA 902 note 5.

2 As to the meaning of 'material' see PARA 902 note 3.

3 Finance Act 1996 s 65A(2)(a) (as added: see note 1). The effect of heads (1)-(3) in the text is to treat the activity as a taxable disposal. As to the meaning of 'taxable disposal' see PARA 902.

4 Finance Act 1996 s 65A(2)(b) (as added: see note 1). As to the meaning of 'disposal of material as waste' see PARA 902 note 3.

5 Finance Act 1996 s 65A(2)(c) (as added: see note 1). As to the meaning of 'disposal of material by way of landfill' see PARA 902 note 4.

6 le for the purposes of the Finance Act 1996 s 65A.

7 'Disposal area' means any area of a landfill site where any landfill disposal takes place: Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 2.

8 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(a).

9 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(b). A 'haul road' means any road within a landfill site which gives access to a disposal area: art 2.

10 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(c). 'Hard standing' means a base within a landfill site on which any landfill site activity such as sorting, treatment, processing, storage or recycling is carried out: art 2.

11 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(d). 'Cell bund' means a structure within a disposal area which separates units of waste: art 2.

12 'Screening bund' means any structure on a landfill site (whether below or above ground) put in place to protect or conceal any landfill site activity or to reduce nuisance from noise: Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 2.

13 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(e).

14 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(f).

15 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(g).

16 le under the Finance Act 1996 s 60, Sch 5 para 1B: see PARA 973.

17 le under the Landfill Tax Regulations 1996, SI 1996/1527, reg 16A: see PARA 972.

18 As to the meaning of 'information area' see PARA 972.

19 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(1)(h).

20 As to the meaning of 'landfill tax' see PARA 901.

21 Landfill Tax (Prescribed Landfill Site Activities) Order 2009, SI 2009/1929, art 3(2).

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904. Special provisions relating to the time of taxable disposals.

Where (1) a taxable disposal¹ is in fact made on a particular day; (2) within the period of 14 days beginning with that day the person liable to pay landfill tax² in respect of the disposal issues a landfill invoice³ in respect of the disposal; and (3) he has not notified the Commissioners for Her Majesty's Revenue and Customs⁴ in writing that he elects not to avail himself of this provision, then for the purposes of the landfill tax provisions⁵ the disposal is to be treated as made at the time the invoice is issued⁶.

The Commissioners may at the request of a person direct that the above provision applies:

- 16 (a) in relation to disposals in respect of which he is liable to pay tax; or
- 17 (b) in relation to such of them as may be specified in the direction,

as if for the period of 14 days there were substituted such longer period as may be specified in the direction⁷.

1 As to the meaning of 'taxable disposal' see PARA 902.

2 As to the meaning of 'landfill tax' see PARA 901.

3 The reference to a landfill invoice is a reference to a document containing such particulars as regulations may prescribe for the purposes of the Finance Act 1996 s 61(1); s 61(2). 'Prescribed' means prescribed by an order or regulations under Pt III (ss 39-71); s 70(1). See the Landfill Tax Regulations 1996, SI 1996/1527, reg 37; and PARA 933 note 8.

4 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

5 In the Finance Act 1996 Pt III: see PARA 901 note 1.

6 Finance Act 1996 s 61(1).

7 Finance Act 1996 s 61(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(3) RATES OF TAX/905. Amount of tax.

(3) RATES OF TAX

905. Amount of tax.

The amount of landfill tax¹ charged on a taxable disposal² is found by taking:

- 18 (1) the relevant amount³ for each whole tonne disposed of and a proportionately reduced sum for any additional part of a tonne⁴; or
- 19 (2) a proportionately reduced sum if less than a tonne is disposed of⁵.

Where the material⁶ disposed of consists entirely of qualifying material⁷ this provision applies as if the reference to the relevant amount were a reference to a lower amount⁸. The Treasury must have regard to the object of securing that material is listed if it is of a kind commonly described as inactive or inert⁹.

The Commissioners for Her Majesty's Revenue and Customs¹⁰ may direct that where material is disposed of it must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material; and whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction¹¹. The Commissioners may at the request of a person direct that where there is a disposal in respect of which he is liable to pay tax the material disposed of must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material, and:

- 20 (a) a direction may apply to all disposals in respect of which a person is liable to pay tax or to such of them as are identified in the direction¹²;
- 21 (b) whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction¹³.

An order may provide that material must not be treated as qualifying material unless prescribed¹⁴ conditions are met¹⁵. A condition may relate to any matter the Treasury thinks fit (such as the production of a document which includes a statement of the nature of the material)¹⁶.

1 As to the meaning of 'landfill tax' see PARA 901.

2 As to the meaning of 'taxable disposal' see PARA 902.

3 At the date at which this volume states the law the relevant amount is £40 and has effect in relation to taxable disposals made or treated as made, on or after 1 April 2009 and before 1 April 2010: see the Finance Act 2008 s 18. For such disposals from 1 April 2008 to 31 March 2009 the amount was £32, and for disposals from 1 April 2007 to 31 March 2008 the amount was £24. For such disposals from 1 April 2010 the amount is to be £48: see the Finance Act 2009 s 18.

4 Finance Act 1996 s 42(1)(a) (amended by the Finance Act 2009 s 18(1)).

5 Finance Act 1996 s 42(1)(b).

6 As to the meaning of 'material' see PARA 902 note 3.

7 As to the meaning of 'qualifying material' see PARA 906.

8 Finance Act 1996 s 42(2) (amended by the Finance Act 2007 s 15(4)). At the date at which this volume states the law the lower amount is £2.50 and has effect in relation to taxable disposals made, or treated as made, on or after 1 April 2008: see the Finance Act 2007 s 15(4), (5). For such disposals before 1 April 2008 the lower amount was £2.

9 Finance Act 1996 s 42(4). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

10 See PARA 901 note 2.

11 See the Finance Act 1996 s 63(1), (2).

12 Finance Act 1996 s 63(3)(a).

13 Finance Act 1996 s 63(3)(b). If a direction under s 63(3) applies to a disposal any direction under s 63(2) does not apply to it: s 63(4).

14 'Prescribed' means prescribed by an order or regulations under the Finance Act 1996 Pt III (ss 39-71): s 70(1).

15 Finance Act 1996 s 63(5). See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528; and PARA 906.

16 Finance Act 1996 s 63(6).

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906. Qualifying material.

The material which is qualifying material¹ is divided into groups².

Group 1 consists of rocks and soils³, but only if they are naturally occurring⁴. This group includes clay, sand, gravel, sandstone, limestone, crushed stone, china clay, construction stone, stone from the demolition of buildings or structures, slate, topsoil, peat, silt and dredgings⁵.

Group 2 consists of ceramic or concrete materials⁶. This group comprises only glass⁷, ceramics⁸ and concrete⁹.

Group 3 consists of minerals¹⁰, but only if they are processed or prepared, not used¹¹. This group comprises only moulding sands¹², clays¹³, mineral absorbents, man-made mineral fibres¹⁴, silica, mica, mineral abrasives¹⁵ and used foundry sand¹⁶.

Group 4 consists of furnace slags¹⁷. This group includes vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble; and slag from waste incineration¹⁸.

Group 5 consists of ash¹⁹. This group comprises only bottom ash and fly ash from wood, coal or waste combustion; and excludes fly ash from municipal, clinical and hazardous waste incinerators and sewage sludge incinerators²⁰.

Group 6 consists of low activity inorganic compounds²¹. This group comprises only titanium dioxide, calcium carbonate, magnesium carbonate, magnesium oxide, magnesium hydroxide, iron oxide, ferric hydroxide, aluminium oxide, aluminium hydroxide and zirconium dioxide²².

Group 7 consists of calcium sulphate²³, but only if it is disposed of either at a site not licensed to take putrescible waste or in a containment cell which takes only calcium sulphate²⁴. This group includes gypsum and calcium sulphate based plasters, but excludes plasterboard²⁵.

Group 8 consists of calcium hydroxide and brine²⁶, but only if it is deposited in a brine cavity²⁷.

Group 9 consists of water²⁸, but only water containing other qualifying material in suspension²⁹.

1 le for the purposes of the Finance Act 1996 s 42: see PARA 905. 'Qualifying material' is material for the time being listed for the purposes of s 42 in an order: s 42(3). As to the meaning of 'material' see PARA 902 note 3. As to the order that has been made see the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, which came into force on 1 October 1996: see art 1.

Where the owner of the material immediately prior to the disposal and the operator of the landfill site at which the disposal is made are not the same person, material must not be treated as qualifying material unless it satisfies the condition that a transfer note includes a proper description of the material in relation to each type of material of which the disposal consists: see arts 5-7. As to the meaning of 'landfill site operator' see PARA 929 note 4; and as to the meaning of 'landfill site' see PARA 902 note 5. 'Transfer note' has the same meaning as in the Environmental Protection (Duty of Care) Regulations 1991, SI 1991/2839, reg 2; definition applied by virtue of the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, art 8. As to the Environmental Protection (Duty of Care) Regulations 1991, SI 1991/2839, see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 645.

2 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, arts 2-4, Schedule.

3 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.

4 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule col 3.

- 5 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 1.
- 6 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 7 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 2(a). 'Glass' includes fritted enamel, but excludes glass fibre and glass-reinforced plastic: Schedule note 3(a).
- 8 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 2(b). 'Ceramics' includes bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories: Schedule note 3(b).
- 9 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 2(c). 'Concrete' includes reinforced concrete, concrete blocks, breeze blocks and aircrete blocks, but excludes concrete plant washings: Schedule note 3(c).
- 10 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 11 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule col 3.
- 12 'Moulding sands' excludes sands containing organic binders: Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 5(a).
- 13 'Clays' includes moulding clays and clay absorbents, including Fuller's earth and bentonite: Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 5(b).
- 14 'Man-made mineral fibres' includes glass fibres, but excludes glass-reinforced plastic and asbestos: Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 5(c).
- 15 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 4.
- 16 See HMRC VAT Notice 48 'Extra Statutory Concessions', ESC 5.1.
- 17 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 18 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 6.
- 19 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 20 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 7.
- 21 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 22 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 8.
- 23 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 24 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule col 3.
- 25 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule note 9.
- 26 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 27 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule col 3.
- 28 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule cols 1, 2.
- 29 See the Landfill Tax (Qualifying Material) Order 1996, SI 1996/1528, Schedule col 3.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(4) DETERMINING THE WEIGHT OF MATERIAL/907. Regulations prescribing rules for determining weight.

(4) DETERMINING THE WEIGHT OF MATERIAL

907. Regulations prescribing rules for determining weight.

The weight of the material¹ disposed of on a taxable disposal² is determined in accordance with regulations³. The regulations may:

- 22 (1) prescribe rules for determining the weight⁴;
- 23 (2) authorise rules for determining the weight to be specified by the Commissioners for Her Majesty's Revenue and Customs⁵ in a prescribed⁶ manner⁷;
- 24 (3) authorise rules for determining the weight to be agreed by the person liable to pay the landfill tax⁸ and an authorised person⁹.

The regulations may in particular prescribe, or authorise the specification or agreement of, rules about:

- 25 (a) the method by which the weight is to be determined¹⁰;
- 26 (b) the time by reference to which the weight is to be determined¹¹;
- 27 (c) the discounting of constituents (such as water)¹².

The regulations may include provision that a specification authorised under head (2) above may provide:

- 28 (i) that it is to have effect only in relation to disposals of such descriptions as may be set out in the specification¹³;
- 29 (ii) that it is not to have effect in relation to particular disposals unless the Commissioners are satisfied that such conditions as may be set out in the specification are met in relation to the disposals¹⁴.

The conditions may be framed by reference to such factors as the Commissioners think fit (such as the consent of an authorised person to the specification having effect in relation to disposals)¹⁵.

The regulations may include provision that where rules are agreed as mentioned in head (3) above, and the Commissioners believe that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason, the Commissioners may direct that the agreed rules are no longer to have effect¹⁶. The regulations must be so framed that where in relation to a given disposal no specification of the Commissioners has effect, and no agreed rules have effect, the weight is to be determined in accordance with rules prescribed in the regulations¹⁷.

The regulations made under the above powers are contained in Part X of the Landfill Tax Regulations 1996¹⁸.

1 As to the meaning of 'material' see PARA 902 note 3.

2 As to the meaning of 'taxable disposal' see PARA 902.

3 Finance Act 1996 s 68(1). As to the regulations made see the text to note 18; and PARAS 908-910.

4 Finance Act 1996 s 68(2)(a).

5 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

6 'Prescribed' means prescribed by an order or regulations under the Finance Act 1996 Pt III (ss 39-71): s 70(1).

7 Finance Act 1996 s 68(2)(b).

8 As to the meaning of 'landfill tax' see PARA 901.

9 Finance Act 1996 s 68(2)(c). An 'authorised person' means any person acting under the authority of the Commissioners for Her Majesty's Revenue and Customs: s 70(1).

10 Finance Act 1996 s 68(3)(a).

11 Finance Act 1996 s 68(3)(b).

12 Finance Act 1996 s 68(3)(c).

13 Finance Act 1996 s 68(4)(a).

14 Finance Act 1996 s 68(4)(b).

15 Finance Act 1996 s 68(4).

16 Finance Act 1996 s 68(5).

17 Finance Act 1996 s 68(6).

18 See the Landfill Tax Regulations 1996, SI 1996/1527, Pt X (regs 41-44): see PARAS 908-910. References in the Landfill Tax Regulations 1996, SI 1996/1527, Pt X to 'weight' must be construed as references to the weight of material comprised in a disposal: see reg 41. 'Disposal' means a landfill disposal made on or after 1 October 1996; and 'disposed of' must be construed accordingly: reg 2(1). As to the meaning of 'landfill disposal' see PARA 902 note 4.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(4) DETERMINING THE WEIGHT OF MATERIAL/908. Basic method.

908. Basic method.

A registrable person¹ must determine weight² by weighing the material³ concerned⁴. The weighing of the material must be carried out at the time of the disposal⁵.

1 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

2 As to the meaning of 'weight' see PARA 907 note 18.

3 As to the meaning of 'material' see PARA 902 note 3.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 42(1), which does not apply where reg 43 or reg 44 (see PARAS 909-910) applies and is subject to reg 42(2) (see the text to note 5): see reg 42(1).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 42(2). For this purpose any time at which the Finance Act 1996 s 61 (see PARA 904) requires the disposal to be treated as made must be disregarded: see reg 42(2) (amended by SI 2009/1930). 'Disposal' means a landfill disposal made on or after 1 October 1996; and 'disposed of' must be construed accordingly: Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1). As to the meaning of 'landfill disposal' see PARA 902 note 4.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(4) DETERMINING THE WEIGHT OF MATERIAL/909. Specification by Commissioners for Revenue and Customs.

909. Specification by Commissioners for Revenue and Customs.

Except where a method for determining weight has been agreed¹, the following provisions apply where the Commissioners for Her Majesty's Revenue and Customs² have specified rules for determining weight³ in a notice published by them and not withdrawn by a further notice⁴. Such a specification made by the Commissioners may make provision for:

- 30 (1) the method by which weight is to be determined⁵;
- 31 (2) the time by reference to which weight is to be determined⁶.

The specification may provide:

- 32 (a) that it is to have effect only in relation to disposals⁷ of such descriptions as may be set out in the specification⁸;
- 33 (b) that it is not to have effect in relation to particular disposals unless the Commissioners are satisfied that such conditions as may be set out in the specification are met in relation to the disposals⁹.

Where such a specification has been made, the registrable person¹⁰ must determine weight in accordance with the rules in the specification (and not under the basic method)¹¹.

1 le under the Landfill Tax Regulations 1996, SI 1996/1527, reg 44: see PARA 910.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 As to the meaning of 'weight' see PARA 907 note 18.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 43(1).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 43(2)(a).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 43(2)(b).

7 As to the meaning of 'disposal' see PARA 908 note 5.

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 43(3)(a).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 43(3)(b).

10 As to the meaning of 'registrable person' see PARA 958 note 1.

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 43(4). As to the basic method see PARA 908.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/1. THE CHARGE TO LANDFILL TAX/(4) DETERMINING THE WEIGHT OF MATERIAL/910. Agreed rules.

910. Agreed rules.

The registrable person¹ and an authorised person² may agree in writing that weight³ is to be determined in accordance with agreed rules⁴. Rules may be agreed as regards:

- 34 (1) the method by which weight is to be determined⁵;
- 35 (2) the time by reference to which weight is to be determined⁶;
- 36 (3) the discounting of water⁷ forming a constituent of material disposed of⁸.

Where these provisions apply, the registrable person must determine weight in accordance with the rules agreed⁹.

Where such rules have been agreed and the Commissioners for Her Majesty's Revenue and Customs¹⁰ believe that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason they may direct that the agreed rules are no longer to have effect¹¹.

1 As to the meaning of 'registrable person' see PARA 958 note 1.

2 As to the meaning of 'authorised person' see PARA 907 note 9.

3 As to the meaning of 'weight' see PARA 907 note 18.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 44(1)(a). The rules referred to are rules other than those described in reg 42 (see PARA 908) or specified under reg 43 (see PARA 909): see reg 44(1)(a). Regulation 44 does not apply where a direction under reg 44(3) (see the text to note 10) has been given: reg 44(1)(b).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 44(2)(a).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 44(2)(b).

7 Subject to the Landfill Tax Regulations 1996, SI 1996/1527, reg 44(6)-(8), rules may be agreed regarding the discounting of water if, and only if:

- 7 (1) no water is present in the material naturally and the water is present because:
 - 1. (a) it has been added for the purpose of enabling the material to be transported for disposal (reg 44(5)(a)(i));
1
 - 2. (b) it has been used for the purpose of extracting any mineral (reg 44(5)(a)(ii)); or
2
 - 3. (c) it has arisen, or has been added, in the course of an industrial process (reg 44(5)(a)(iii)); or
3

- 8 (2) the material is the residue from the treatment of effluent or sewage by a water treatment works (reg 44(5)(b)).

As to the meaning of 'material' see PARA 902 note 3. As to the meaning of 'disposal' see PARA 908 note 5.

Rules may not be agreed under reg 44(5) where any of the material is capable of escaping from the landfill site concerned by leaching unless: (i) it is likely to do so in the form of water only (reg 44(6)(a)); or (ii) the leachate is to be collected on the site concerned and treated in order to eliminate any potential it has to cause harm (reg 44(6)(b)). As to the meaning of 'landfill site' see PARA 902 note 5; definition applied by virtue of reg 2(1).

Where the material falls within reg 44(5)(a) (see head (1)), rules may not be agreed under reg 44(5) unless the total water which has been added, or (in a case falling within reg 44(5)(a)(iii)) has arisen or has been added or both, constitutes 25% or more of the weight at the time of the disposal: reg 44(7).

Where the material falls within reg 44(5)(b) (see head (2)), rules may not be agreed under reg 44(5) except for the discounting of water which has been added prior to disposal (and not of water which is present in the material naturally): reg 44(8). For the purposes of reg 44(8), any water which has been extracted prior to disposal must be deemed to be water that has been added, except that where the water extracted exceeds the quantity of water added that excess must be deemed to have been present naturally: reg 44(9).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 44(2)(c). As to the meaning of 'disposed of' see PARA 908 note 5.

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 44(4). Ie the determination is not made in accordance with reg 42 (see PARA 908) or reg 43 (see PARA 909).

10 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 44(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2.
EXEMPTIONS/911. Material removed from water.

2. EXEMPTIONS

911. Material removed from water.

A disposal is not a taxable disposal¹ for the purposes of the landfill tax provisions² if it is shown to the satisfaction of the Commissioners for Her Majesty's Revenue and Customs³ that the disposal is of material⁴:

37 (1) all of which:

1. (a) has been removed (by dredging or otherwise) from a river, canal or watercourse (whether natural or artificial) or a dock or harbour (whether natural or artificial)⁵; and
2. (b) formed part of or projected from the bed of the water concerned before its removal⁶;

2
38 (2) all of which:

3. (a) has been removed (by dredging or otherwise) from water falling within the approaches to a harbour (whether natural or artificial)⁷;
4. (b) has been removed in the interests of navigation⁸; and
5. (c) formed part of or projected from the bed of the water concerned before its removal⁹;

4
39 (3) all of which:

6. (a) consists of naturally occurring mineral material¹⁰; and
7. (b) has been removed (by dredging or otherwise) from the sea in the course of commercial operations carried out to obtain substances such as sand or gravel from the seabed¹¹; or

6
40 (4) all of which comprises material within head (1) or (2) above and other material which has been added to that material for the purpose of securing that it is not liquid waste¹².

1 As to the meaning of 'taxable disposal' see PARA 902.

2 Ie the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 As to the meaning of 'material' see PARA 902 note 3.

5 Finance Act 1996 s 43(1)(a), (2).

6 Finance Act 1996 s 43(1)(b).

7 Finance Act 1996 s 43(3)(a).

8 Finance Act 1996 s 43(3)(b).

- 9 Finance Act 1996 s 43(3)(c).
- 10 Finance Act 1996 s 43(4)(a).
- 11 Finance Act 1996 s 43(4)(b).
- 12 Finance Act 1996 s 43(5) (added by SI 2007/2909).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2.
EXEMPTIONS/912. Contaminated land.

912. Contaminated land.

A disposal is not a taxable disposal¹ for the purposes of the landfill tax provisions² if:

- 41 (1) it is of material all of which has been removed from land in relation to which a reclamation of contaminated land certificate³ was in force at the time of the removal⁴;
- 42 (2) none of that material has been removed from a part of the land in relation to which, as at the time of the removal, the qualifying period has expired⁵;
- 43 (3) it is a disposal in relation to which any conditions to which the certificate was made subject are satisfied⁶; and
- 44 (4) it is not a disposal of material the removal of which is required by statutory notice⁷, except where the removal has been carried out by or on behalf of:
 - 7 8. (a) a local authority⁸;
 9. (b) a development corporation⁹;
 10. (c) the Environment Agency¹⁰; or
 11. (d) the Scottish Environment Protection Agency¹¹.

1 As to the meaning of 'taxable disposal' see PARA 902.

2 Ie the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 Ie a certificate issued under the Finance Act 1996 s 43B: see PARA 913. See generally *Taylor Woodrow Construction Northern Ltd v Customs and Excise Comrs* L00003 (pollutants removed from development site were entitled to contaminated land certificate).

4 Finance Act 1996 s 43A(1), (2)(a) (s 43A added by SI 1996/1529). As to the meaning of 'material' see PARA 902 note 3. The removal of material includes its removal from one part of the land for disposal on another part of the same land: Finance Act 1996 s 43A(7)(a) (as so added). 'Land' includes land covered by water: s 43A(6) (as so added).

As from 1 April 2012 Finance Act 1996 s 43A is repealed by the Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008, SI 2008/2669, art 4(a).

5 Finance Act 1996 s 43A(2)(b) (as added: see note 4). The qualifying period expires, in relation to the part of the land in question:

- 9 (1) in the case of a reclamation which qualified under s 43B(7)(a) (see PARA 913), where the object involves the construction of a building or a civil engineering work, when the construction commences (s 43A(3)(a) (as so added));
- 10 (2) in any other case of a reclamation which qualified under s 43B(7)(a) (see PARA 913), when pollutants have been cleared to the extent that they no longer prevent the object from being fulfilled (s 43A(3)(b) (as so added)); or
- 11 (3) in the case of a reclamation which qualified under s 43B(7)(b) (see PARA 913), when pollutants have been cleared to the extent that the potential for harm has been removed (s 43A(3)(c) (as so added)).

The clearing of pollutants includes their being cleared from one part of the land for disposal on another part of the same land: s 43A(7)(b) (as so added).

6 Finance Act 1996 s 43A(2)(c) (as added: see note 4).

7 Finance Act 1996 s 43A(2)(d) (as added: see note 4). Section 43A(2)(d) refers to a disposal not falling within s 43A(4) (as added and amended). A disposal is within s 43A(4) if it is of material the removal of any of which is required in order to comply with:

- 12 (1) a works notice served under the Control of Pollution Act 1974 s 46A (repealed) (Finance Act 1996 s 43A(4)(a) (as so added));
- 13 (2) an enforcement notice served under the Environmental Protection Act 1990 s 13 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 174) (Finance Act 1996 s 43A(4)(b) (as so added));
- 14 (3) a prohibition notice served under the Environmental Protection Act 1990 s 14 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 175) (Finance Act 1996 s 43A(4)(c) (as so added));
- 15 (4) an order under the Environmental Protection Act 1990 s 26 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 184) (Finance Act 1996 s 43A(4)(d) (as so added));
- 16 (5) a remediation notice served under the Environmental Protection Act 1990 s 78E (as added and amended) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 766) (Finance Act 1996 s 43A(4)(e) (as so added));
- 17 (6) an enforcement notice served under the Water Resources Act 1991 s 90B (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 310) (Finance Act 1996 s 43A(4)(f) (as so added));
- 18 (7) a works notice served under the Water Resources Act 1991 s 161A (as added and amended) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 321 et seq) (Finance Act 1996 s 43A(4)(g) (as so added));
- 19 (8) an enforcement notice served under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36 (Finance Act 1996 s 43A(4)(h) (s 43A(4)(h), (j), (k) added by SI 2000/1973; and substituted by SI 2007/3538);
- 20 (9) a suspension notice served under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37 (Finance Act 1996 s 43A(4)(j) (as so added and substituted)); or
- 21 (10) an order under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 44 (Finance Act 1996 s 43A(4)(k) (as so added and substituted)).

As from a day to be appointed, the provisions of the Finance Act 1996 s 43A(4)(b)-(d) are repealed by the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. At the date at which this volume states the law no such day had been appointed.

8 Finance Act 1996 s 43A(5)(a) (s 43 as added (see note 4); and s 43A(5) amended by the Housing and Regeneration Act 2008 ss 56, 321(1), Sch 8 para 64, Sch 16). For the purposes of the Finance Act 1996, 'local authority' means: (1) the council of a county, county borough, district, London borough, parish or group of parishes (or, in Wales, community or group of communities); (2) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively; (3) the council of the Isles of Scilly; and (4) any joint committee or joint board established by two or more of the foregoing: see s 70(2A) (added by SI 1996/1529).

9 Finance Act 1996 s 43A(5)(b) (as added: see note 4). 'Development corporation' means a corporation established under the Local Government, Planning and Land Act 1980 s 135 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428): Finance Act 1996 s 43A(6) (as so added).

10 Finance Act 1996 s 43A(5)(c) (as added: see note 4). 'Environment Agency' means the body established by the Environment Act 1995 s 1 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68): Finance Act 1996 s 70(1) (definition added by SI 1996/1529). As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

11 Finance Act 1996 s 43A(5)(d) (as added: see note 4). 'Scottish Environment Protection Agency' means the body established by the Environment Act 1995 s 20: Finance Act 1996 s 70(1) (definition added by SI 1996/1529).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2.
EXEMPTIONS/913. Reclamation of contaminated land certificates.

913. Reclamation of contaminated land certificates.

The Commissioners for Her Majesty's Revenue and Customs¹ must issue a certificate in relation to any land² where:

- 45 (1) an application in writing is made before 1 December 2008³ by a person carrying out, or intending to carry out, a reclamation of that land (the 'applicant')⁴;
- 46 (2) the applicant provides to them such information as they may direct, whether generally or as regards that particular case, within such time as they may direct⁵;
- 47 (3) the application is made not less than 30 days before the date from which the certificate is to take effect⁶; and
- 48 (4) the reclamation qualifies⁷.

The Commissioners may not refuse an application for a certificate in a case where the conditions specified in heads (1) to (4) above are satisfied unless it appears to them:

- 49 (a) necessary to do so for the protection of the revenue⁸; or
- 50 (b) except where the applicant is one of certain specified bodies⁹, that all or part of the reclamation of land to which the application relates is required in order to comply with any of certain statutory notices or orders¹⁰.

The Commissioners may make a certificate subject to such conditions set out in the certificate as they think fit, including (but not restricted to) conditions:

- 51 (i) that the certificate is to be in force only in relation to a particular quantity of material¹¹;
- 52 (ii) that the certificate is to be in force only in relation to disposals made at a particular landfill site¹² or sites¹³;
- 53 (iii) that the certificate is to be in force in relation to part only of the land to which the application relates¹⁴.

A certificate so issued has effect from the date it is issued to the applicant or such later date as the Commissioners may specify in the certificate¹⁵; and ceases to have effect on such date as the Commissioners may set out in the certificate, but in any event no later than the day on which the person to whom the certificate was issued ceases to have the intention to carry out any activity involving reclamation of the land in relation to which the certificate was issued¹⁶.

Where a certificate has been issued to a person, the Commissioners may vary it by issuing a further certificate to that person¹⁷, or may withdraw it by giving notice in writing to that person¹⁸. However, the Commissioners may not withdraw a certificate unless it appears to them:

- 54 (A) necessary to do so for the protection of the revenue¹⁹;
- 55 (B) that the reclamation did not in fact qualify²⁰ or no longer qualifies²¹;
- 56 (C) that there will not be any or any more disposals of material from the land to which the certificate relates²²; or

- 57 (d) except where the person to whom the certificate was issued is one of certain bodies²³, that the removal of material from the land to which the certificate relates is required in order to comply with any of certain statutory notices or orders²⁴.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 As to the meaning of 'land' see PARA 912 note 4; definition applied by virtue of the Finance Act 1996 s 43B(12) (s 43B added by SI 1996/1529). See also note 3.

3 The Finance Act 1996 s 43B(1)-(3) is repealed as from 1 December 2008 by the Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008, SI 2008/2669, art 3. The repeal does not have effect until 1 April 2012 in relation to applications made before 1 December 2008: art 3(2).

The Finance Act 1996 s 43B(4)-(12) is repealed as from 1 April 2012 by the Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008, SI 2008/2669, art 4.

4 Finance Act 1996 s 43B(1)(a) (as added: see note 2). See also note 3.

5 Finance Act 1996 s 43B(1)(b) (s 43B as added (see note 2); s 43B(1)(b) amended by SI 2008/2669). See also note 3.

6 Finance Act 1996 s 43B(1)(c) (as added: see note 2). See also note 3. This rule was varied by an extra-statutory class concession of 5 June 1997 (see *Business Brief 12/97*) for certificates issued prior to 30 June 1997 in relation to claims for remission of tax subject to the following conditions:

- 22 (1) the waste must clearly have qualified for exemption;
- 23 (2) such waste was charged to tax on disposal;
- 24 (3) such waste must have come from reclamations which have at least some of their waste certified to ensure that the claim would have been subject to verification by a local officer of the Commissioners; and
- 25 (4) the claim for remission was received by the Commissioners by 30 September 1997.

In *Zenith Builders v Customs and Excise Comrs* (1998) L00001, the tribunal considered an appeal against the Commissioners' refusal to exercise the concession where the material was not available to be subject to verification; on the Commissioners' application to strike out the appeal (there being no jurisdiction for the tribunal to consider the refusal of the concession) the matter was treated as a preliminary issue and it was clear that the circumstances meant that the appeal failed.

7 Finance Act 1996 s 43B(1)(d) (as added: see note 2). See also note 3. A reclamation qualifies for this purpose if:

- 26 (1) it is, or is to be, carried out with the object of facilitating (in the sense of 'making easier' (see *Taylor Woodrow Construction Northern Ltd v Customs and Excise Comrs* (1998) L00003) development, conservation, the provision of a public park or other amenity, or the use of the land for agriculture or forestry (Finance Act 1996 s 43B(7)(a) (as so added)); or
- 27 (2) in a case other than one within head (1), it is, or is to be, carried out with the object of reducing or removing the potential of pollutants to cause harm (s 43B(7)(b) (as so added)),

and, in either case, the following conditions are satisfied:

- 28 (a) the reclamation constitutes or includes clearing the land of pollutants which are causing harm or have the potential for causing harm (s 43B(8)(a) (as so added));
- 29 (b) in a case within s 43B(7)(a) (see head (1)), those pollutants would (unless cleared) prevent the object concerned being fulfilled (s 43B(8)(b) (as so added)); and
- 30 (c) all relevant activities have ceased or have ceased to give rise to any pollutants in relation to that land (s 43B(8)(c) (as so added)).

For these purposes, the clearing of pollutants need not be such that all pollutants are removed (s 43B(9)(a) (as so added)), need not be such that pollutants are removed from every part of the land in which they are present (s 43B(9)(b) (as so added)), and may involve their being cleared from one part of the land and disposed of on another part of the same land (s 43B(9)(c) (as so added)).

An activity is relevant if:

- 31 (i) it has at any time resulted in the presence of pollutants in, on or under the land in question otherwise than: (A) without the consent of the person who was the occupier of the land at the time; or (B) by allowing pollutants to be carried onto the land by air or water (s 43B(10)(a) (as so added)); and
- 32 (ii) at that time it was carried out: (A) by the applicant or a person connected with him; or (B) by any person on the land in question (s 43B(10)(b) (as so added)).

Any question whether a person is connected with another is to be determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1258): Finance Act 1996 s 43B(11)(a) (as so added). The occupier of land that is not in fact occupied is the person entitled to occupy it: s 43B(11)(b) (as so added).

As to the application of s 47B(7), (8) see *Taylor Woodrow Construction Northern Ltd v Customs and Excise Comrs* (1998) L00003; *Baldwin* L00022; *Augean plc v Revenue and Customs Comrs* [2008] EWHC 2026 (Ch), [2008] All ER (D) 100 (Aug), [2008] STC 2894.

8 Finance Act 1996 s 43B(2)(a) (as added: see note 2). See also note 3. As to the Commissioners' powers to withdraw certificates see *Taylor Woodrow Construction Northern Ltd v Customs and Excise Comrs* (1998) L00003.

9 le one of the bodies mentioned in the Finance Act 1996 s 43A(5) (as added and amended): see PARA 912.

10 Finance Act 1996 s 43B(2)(b) (as added: see note 2). See also note 3. The statutory notices and orders referred to in the text are those mentioned in s 43A(4) (as added and amended): see PARA 912 note 7.

11 Finance Act 1996 s 43B(3)(a) (as added: see note 2). See also note 3. As to the meaning of 'material' see PARA 902 note 3.

12 As to the meaning of 'landfill site' see PARA 902 note 5.

13 Finance Act 1996 s 43B(3)(b) (as added: see note 2). See also note 3.

14 Finance Act 1996 s 43B(3)(c) (as added: see note 2). See also note 3.

15 Finance Act 1996 s 43B(4)(a) (as added: see note 2). See also note 3.

16 Finance Act 1996 s 43B(4)(b) (as added: see note 2). See also note 3.

17 Finance Act 1996 s 43B(5)(a) (as added: see note 2). See also note 3.

18 le subject to Finance Act 1996 s 43B(6): s 43B(5)(b) (as added: see note 2). See also note 3.

19 Finance Act 1996 s 43B(6)(a) (as added: see note 2). See also note 3.

20 le under the Finance Act 1996 s 43B(7): see note 7.

21 Finance Act 1996 s 43B(6)(b) (as added: see note 2). See also note 3.

22 Finance Act 1996 s 43B(6)(c) (as added: see note 2). See also note 3.

23 See note 9.

24 Finance Act 1996 s 43B(6)(d) (as added: see note 2). See also note 3. The statutory notices and orders referred to in the text are those mentioned in s 43A(4) (as added and amended): see PARA 912 note 7.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2.
EXEMPTIONS/914. Mining and quarrying.

914. Mining and quarrying.

A disposal is not a taxable disposal¹ for the purposes of the landfill tax provisions² if it is shown to the satisfaction of the Commissioners for Her Majesty's Revenue and Customs³ that the disposal is of material⁴ all of which fulfils each of the following conditions⁵: (1) the material must result from commercial mining operations (whether the mining is deep or open-cast) or from commercial quarrying operations⁶; (2) the material must be naturally occurring material extracted from the earth in the course of the operations⁷; and (3) the material must not have been subjected to, or result from, a non-qualifying process⁸ carried out at any stage between the extraction and the disposal⁹.

1 As to the meaning of 'taxable disposal' see PARA 902.

2 Ie the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 As to the meaning of 'material' see PARA 902 note 3.

5 Finance Act 1996 s 44(1).

6 Finance Act 1996 s 44(2). As to mining and quarrying see **MINES, MINERALS AND QUARRIES**.

7 Finance Act 1996 s 44(3).

8 A non-qualifying process is: (1) a process separate from the mining or quarrying operations (Finance Act 1996 s 44(5)(a)); or (2) a process forming part of those operations and permanently altering the material's chemical composition (s 44(5)(b)).

9 Finance Act 1996 s 44(4).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2.
EXEMPTIONS/915. Quarries.

915. Quarries.

A disposal is not a taxable disposal¹ for the purposes of the landfill tax provisions² if it is:

- 58 (1) of material all of which is treated as qualifying material³;
- 59 (2) made at a quarry which is a qualifying landfill site⁴; and
- 60 (3) made, or treated as made, on or after 1 October 1999⁵.

1 As to the meaning of 'taxable disposal' see PARA 902.

2 I.e. the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 Finance Act 1996 s 44A(1)(a) (s 44A added by the Landfill Tax (Site Restoration and Quarries) Order 1999, SI 1999/2075, art 1). As to the meaning of 'qualifying material' see PARA 906.

4 Finance Act 1996 s 44A(1)(b) (as added: see note 3). A landfill site is a 'qualifying landfill site' for the purposes of s 44A (as added and amended) if at the time of the disposal:

- 33 (1) the landfill site is or was a quarry (s 44A(2)(a) (as so added));
- 34 (2) it is a requirement of planning consent in respect of the land in which the quarry or former quarry is situated that it be wholly or partially refilled (s 44A(2)(b) (as so added)), unless the quarry was in existence before 1 October 1999 and quarrying operations ceased before that date in which case the requirement must have been imposed on or before that date (s 44A(3) (as so added)); and
- 35 (3) the licence, permit or resolution authorising disposals on or in the land permits only the disposal of material which is qualifying material (s 44A(2)(c) (as so added; and amended by SI 2005/725)).

Where a licence or permit does not meet the requirements of head (3) above and an application has been made to vary the licence or permit in order to meet them, it is deemed to meet them for the period before: (a) the application is disposed of; or (b) the second anniversary of the making of the application if it occurs before the application is disposed of: Finance Act 1996 s 44A(4) (as so added; and amended by SI 2005/725). An application is disposed of if: (i) it is granted; (ii) it is withdrawn; (iii) it is refused and there is no right of appeal against the refusal; (iv) a time limit for appeal against refusal expires without an appeal having been commenced; or (v) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal: Finance Act 1996 s 44A(5) (as so added). As to mines and quarries see **MINES, MINERALS AND QUARRIES**.

5 Finance Act 1996 s 44A(1)(c) (as added: see note 3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2.
EXEMPTIONS/916. Pet cemeteries.

916. Pet cemeteries.

A disposal is not a taxable disposal¹ for the purposes of the landfill tax provisions² if:

- 61 (1) the disposal is of material³ consisting entirely of the remains of dead domestic pets⁴; and
- 62 (2) the landfill site⁵ at which the disposal is made fulfils the test set out below⁶.

The test is that during the relevant period⁷: (a) no landfill disposal⁸ was made at the site⁹; or (b) the only landfill disposals made at the site were of material consisting entirely of the remains of dead domestic pets¹⁰.

1 As to the meaning of 'taxable disposal' see PARA 902.

2 Ie the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 As to the meaning of 'material' see PARA 902 note 3.

4 Finance Act 1996 s 45(1)(a).

5 As to the meaning of 'landfill site' see PARA 902 note 5.

6 Finance Act 1996 s 45(1)(b).

7 For the purposes of the Finance Act 1996 s 45(2), the relevant period begins with 1 October 1996 or (if later) with the coming into force in relation to the site of the licence, resolution or permit mentioned in s 66 (see PARA 902), and ends immediately before the disposal mentioned in s 45(1): s 45(3) (amended by SI 2005/725).

8 As to the meaning of 'landfill disposal' see PARA 902 note 4.

9 Finance Act 1996 s 45(2)(a).

10 Finance Act 1996 s 45(2)(b).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/2. EXEMPTIONS/917. Power to exempt or include by order.

917. Power to exempt or include by order.

Provision may be made by order to produce the result that:

- 63 (1) a disposal which would otherwise be a taxable disposal¹ (by virtue of the landfill tax provisions² as they apply for the time being) is not a taxable disposal³;
- 64 (2) a disposal which would otherwise not be a taxable disposal (by virtue of the landfill tax provisions as they apply for the time being) is a taxable disposal⁴.

Without prejudice to the generality of the above provisions, such an order may:

- 65 (a) confer exemption by reference to certificates issued by the Commissioners for Her Majesty's Revenue and Customs⁵ and to conditions set out in certificates⁶;
- 66 (b) allow the Commissioners to direct requirements to be met before certificates can be issued⁷;
- 67 (c) provide for the reviews and appeals relating to decisions about certificates⁸.

Such provision may be made in such way as the Treasury thinks fit (whether by amending the legislation or otherwise)⁹.

1 As to the meaning of 'taxable disposal' see PARA 902.

2 I.e. the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 Finance Act 1996 s 46(1)(a).

4 Finance Act 1996 s 46(1)(b).

5 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

6 Finance Act 1996 s 46(2)(a).

7 Finance Act 1996 s 46(2)(b).

8 Finance Act 1996 s 46(2)(c) (substituted by SI 2009/56).

9 Finance Act 1996 s 46(3). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. For examples of orders made under s 46 see the Landfill Tax (Contaminated Land) Order 1996, SI 1996/1529; the Landfill Tax (Site Restoration and Quarries) Order 1999, SI 1999/2075; and the Landfill Tax (Site Restoration, Quarries and Pet Cemeteries) Order 2005, SI 2005/725.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/3. DEEMED AMOUNTS OF TAX/918. Adjustment of contracts.

3. DEEMED AMOUNTS OF TAX

918. Adjustment of contracts.

In a case where:

- 68 (1) material¹ undergoes a landfill disposal²;
- 69 (2) a payment falls to be made under a disposal contract relating to the material³; and
- 70 (3) after the making of the contract there is a change in the landfill tax chargeable⁴ on the landfill disposal⁵,

the amount of any payment mentioned in head (2) above must be adjusted, unless the disposal contract otherwise provides, so as to reflect the tax chargeable on the landfill disposal⁶.

In a case where:

- 71 (a) work is carried out under a construction contract⁷;
- 72 (b) as a result of the work, material undergoes a landfill disposal⁸;
- 73 (c) the contract makes no provision as to the disposal of such material⁹; and
- 74 (d) the contract was made on or before 29 November 1994 (when the proposal to create landfill tax was announced)¹⁰,

the amount of any payment which falls to be made: (i) under the construction contract; and (ii) in respect of the work, must be adjusted, unless the contract otherwise provides, so as to reflect the tax (if any) chargeable on the disposal¹¹.

1 As to the meaning of 'material' see PARA 902 note 3.

2 Finance Act 1996 s 60, Sch 5 para 45(1)(a). As to the meaning of 'landfill disposal' see PARA 902 note 4.

3 Finance Act 1996 Sch 5 para 45(1)(b).

For the purposes of Sch 5 para 45, a disposal contract relating to material is a contract providing for the disposal of the material, and it is immaterial: (1) when the contract was made (Sch 5 para 45(3)(a)); (2) whether the contract also provides for other matters (Sch 5 para 45(3)(b)); (3) whether the contract provides for a method of disposal and (if it does) what method it provides for (Sch 5 para 45(3)(c)).

4 The reference in the Finance Act 1996 Sch 5 para 45(1) to a change in the landfill tax chargeable is a reference to a change: (1) to or from no tax being chargeable (Sch 5 para 45(4)(a)); or (2) in the amount of tax chargeable (Sch 5 para 45(4)(b)).

5 Finance Act 1996 Sch 5 para 45(1)(c).

6 Finance Act 1996 Sch 5 para 45(2).

7 Finance Act 1996 Sch 5 para 46(1)(a).

For the purposes of Sch 5 para 46, a construction contract is a contract under which all or any of the following work is to be carried out: (1) the preparation of a site (Sch 5 para 46(3)(a)); (2) demolition (Sch 5 para 46(3)(b)); (3) building (Sch 5 para 46(3)(c)); (4) civil engineering (Sch 5 para 46(3)(d)).

8 Finance Act 1996 Sch 5 para 46(1)(b).

- 9 Finance Act 1996 Sch 5 para 46(1)(c).
- 10 Finance Act 1996 Sch 5 para 46(1)(d).
- 11 Finance Act 1996 Sch 5 para 46(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/3. DEEMED AMOUNTS OF TAX/919. Adjustment of rent etc.

919. Adjustment of rent etc.

In a case where:

- 75 (1) an agreement with regard to any sum payable in respect of the use of land (whether the sum is called rent or royalty or otherwise) provides that the amount of the sum is to be calculated by reference to the turnover of a business¹;
- 76 (2) the agreement was made on or before 29 November 1994 (when the proposal to create landfill tax² was announced)³; and
- 77 (3) the circumstances are such that (had the agreement been made after that date) it can reasonably be expected that it would have provided that tax be ignored in calculating the turnover⁴,

the agreement must be taken to provide that tax be ignored in calculating the turnover⁵.

1 Finance Act 1996 s 60, Sch 5 para 47(1)(a).

2 As to the meaning of 'landfill tax' see PARA 901.

3 Finance Act 1996 Sch 5 para 47(1)(b).

4 Finance Act 1996 Sch 5 para 47(1)(c).

5 Finance Act 1996 Sch 5 para 47(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(1) REGISTRATION FOR LANDFILL TAX/920. Registration.

4. REGISTRATION AND INFORMATION

(1) REGISTRATION FOR LANDFILL TAX

920. Registration.

A person who carries out taxable activities¹, and is not registered, is liable to be registered². Where a person at any time forms the intention of carrying out taxable activities, and he is not registered, he must notify the Commissioners for Her Majesty's Revenue and Customs³ of his intention⁴. A person who at any time ceases to have the intention of carrying out taxable activities must notify the Commissioners of that fact⁵. Where a person is liable to be so registered the Commissioners must register him with effect from the time when he begins to carry out taxable activities⁶.

Where the Commissioners are satisfied that a person has ceased to carry out taxable activities, they may cancel his registration with effect from the earliest practicable time after he so ceased⁷.

Where:

- 78 (1) a person notifies⁸ the Commissioners of his intention to cease to carry out taxable activities;
- 79 (2) they are satisfied that he will not carry out taxable activities;
- 80 (3) they are satisfied that no tax which he is liable to pay is unpaid; and
- 81 (4) they are satisfied that no credit to which he is entitled under regulations⁹ is outstanding,

the Commissioners must cancel his registration with effect from the earliest practicable time after he ceases to carry out taxable activities¹⁰.

Where:

- 82 (a) a person notifies¹¹ the Commissioners of his ceasing to have the intention of carrying out taxable activities; and
- 83 (b) they are satisfied that he has not carried out, and will not carry out, taxable activities,

the Commissioners must cancel his registration with effect from the time when he ceased to have the intention to carry out taxable activities¹².

For these purposes regulations may make provision:

- 84 (i) as to the time within which a notification is to be made¹³;
- 85 (ii) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it¹⁴;
- 86 (iii) requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate¹⁵;
- 87 (iv) as to the correction of entries in the register¹⁶.

The register kept under these provisions may contain such information as the Commissioners think is required for the purposes of the care and management of the landfill tax¹⁷.

1 A person carries out a taxable activity if: (1) he makes a taxable disposal in respect of which he is liable to pay tax (Finance Act 1996 s 69(1)(a)); or (2) he permits another person to make a taxable disposal in respect of which the first-mentioned person is liable to pay tax (s 69(1)(b)). As to the meaning of 'taxable disposal' see PARA 902. Where (a) a taxable disposal is made; and (b) it is made without the knowledge of the person who is liable to pay tax in respect of it, then that person must for the purposes of s 69 be taken to permit the disposal: s 69(2).

2 Finance Act 1996 s 47(2).

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 Finance Act 1996 s 47(3). Notification must be made on the prescribed form: Landfill Tax Regulations 1996, SI 1996/1527, reg 4(1). For the prescribed form see Schedule Form 1. Any reference to a form prescribed in the Schedule to the Landfill Tax Regulations 1996, SI 1996/1527, includes a reference to a form which the Commissioners are satisfied is a form to the like effect: reg 2(4). Where the notification is made by a person who operates or intends to operate more than one landfill site, it must include the particulars set out on the prescribed form: reg 4(2), Schedule Form 2. Where the notification is made by a partnership, it must include the particulars set out on the prescribed form: reg 4(3), Schedule Form 3. The notification must be made within 30 days of the earliest date after 1 August 1996 on which the person either forms or continues to have the intention to carry out taxable activities: reg 4(4).

A person who fails to comply with the Finance Act 1996 s 47(3) is liable to a penalty equal to 5% of the relevant tax or, if it is greater or the circumstances are such that there is no relevant tax, to a penalty of £250: s 60, Sch 5 para 21(1). 'Relevant tax' means the tax (if any) for which the person concerned is liable for the period which:

- 36 (1) begins on the date with effect from which he is, in accordance with s 47, required to be registered (Sch 5 para 21(2)(a)); and
- 37 (2) ends on the date on which the Commissioners received notification of, or otherwise became aware of, his liability to be registered (Sch 5 para 21(2)(b)).

However, where, by reason of conduct falling within Sch 5 para 21(1):

- 38 (a) a person is convicted of an offence (whether under Pt III (ss 39-71) or otherwise); or
- 39 (b) a person is assessed to a penalty under Sch 5 para 18 (evasion: see PARA 987),

that conduct does not also give rise to liability to a penalty under Sch 5 para 21: Sch 5 para 21(4).

For obligations to comply with s 47(3) arising on or after 1 April 2010, Sch 5 para 21(1), (2) and (4) are repealed by the Finance Act 2008 s 123, Sch 41 para 25(h)(ii); Finance Act 2008, Schedule 41 (Appointed Day and Transitional Provisions) Order 2009, SI 2009/511, arts 2, 3. As to the penalty for failure to comply with the Finance Act 1996 s 47(2) or (3) where the obligation arises on or after 1 April 2010 see the Finance Act 2008, Sch 41 para 1; and **INCOME TAXATION**.

5 Finance Act 1996 s 47(4). A person who fails to comply with s 47(4) is liable to a penalty of £250: Sch 5 para 21(3).

6 Finance Act 1996 s 47(5). Section 47(5) applies whether or not he notifies the Commissioners under s 47(3) (see the text to note 4): see s 47(5).

7 Finance Act 1996 s 47(6). Section 47(6) applies whether or not he notifies the Commissioners under s 47(4) (see the text to note 5): see s 47(6).

8 Ie under the Finance Act 1996 s 47(4): see the text to note 5.

9 Ie regulations made under the Finance Act 1996 s 51: see PARA 938 et seq.

10 Finance Act 1996 s 47(7), which only applies where s 47(8) does not apply: see the text to note 12.

11 Ie under the Finance Act 1996 s 47(4): see the text to note 5.

12 Finance Act 1996 s 47(8).

- 13 Finance Act 1996 s 47(9)(a).
- 14 Finance Act 1996 s 47(9)(b).
- 15 Finance Act 1996 s 47(9)(c).
- 16 Finance Act 1996 s 47(9)(d). See also the Landfill Tax Regulations 1996, SI 1996/1527.
- 17 Finance Act 1996 s 47(1). As to the meaning of 'landfill tax' see PARA 901.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(2) REQUIREMENT TO PROVIDE INFORMATION/921. Information required to keep register up to date.

(2) REQUIREMENT TO PROVIDE INFORMATION

921. Information required to keep register up to date.

Regulations¹ may make provision requiring a registrable person² to notify the Commissioners for Her Majesty's Revenue and Customs³ of particulars which:

- 88 (1) are of changes in circumstances relating to the registrable person or any business carried on by him⁴;
- 89 (2) appear to the Commissioners to be required for the purpose of keeping the register⁵ up to date⁶; and
- 90 (3) are of a prescribed⁷ description⁸.

Regulations may also make provision:

- 91 (a) as to the time within which a notification is to be made⁹;
- 92 (b) as to the form and manner in which a notification is to be made¹⁰;
- 93 (c) requiring a person who has made a notification to notify the Commissioners if any information contained in it is inaccurate¹¹.

1 See the Landfill Tax Regulations 1996, SI 1996/1527, Pt II (regs 4-9); and PARAS 920, 970 et seq.

2 As to the meaning of 'registrable person' see PARA 958 note 1.

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 Finance Act 1996 s 48(1)(a).

5 Ie the register kept under the Finance Act 1996 s 47: see PARA 920.

6 Finance Act 1996 s 48(1)(b).

7 'Prescribed' means prescribed by an order or regulations under the Finance Act 1996 Pt III (ss 39-71): s 70(1).

8 Finance Act 1996 s 48(1)(c).

9 Finance Act 1996 s 48(2)(a).

10 Finance Act 1996 s 48(2)(b).

11 Finance Act 1996 s 48(2)(c).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(2) REQUIREMENT TO PROVIDE INFORMATION/922. Changes in particulars.

922. Changes in particulars.

A person who has made a notification of liability to be registered under the landfill tax regulations¹, must, within 30 days of discovering any inaccuracy in, or any change occurring which causes to become inaccurate, any of the information which was contained in or provided with the notification, notify the Commissioners for Her Majesty's Revenue and Customs² in writing and furnish them with full particulars³.

Without prejudice to the above, a registrable person⁴ must, within 30 days of any change occurring in any of certain circumstances⁵, notify the Commissioners in writing and furnish them with particulars of the change⁶ and the date on which the change occurred⁷. A registrable person who discovers that any information contained in or provided with such a notification was inaccurate must, within 30 days of his discovering the inaccuracy, notify the Commissioners in writing and furnish them with particulars of:

- 94 (1) the inaccuracy⁸;
- 95 (2) the date on which the inaccuracy was discovered⁹;
- 96 (3) how the information was inaccurate¹⁰; and
- 97 (4) the correct information¹¹.

Any person failing to comply with a requirement imposed in any of the above provisions is liable to a penalty¹². Where in relation to a registered person¹³ the Commissioners are satisfied that any of the information recorded in the register¹⁴ is or has become inaccurate they may correct the register accordingly¹⁵.

1 Ie a notification under the Landfill Tax Regulations 1996, SI 1996/1527, reg 4, whether or not it was made in accordance with reg 4(4): see PARA 920.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(1).

4 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

5 Ie the following circumstances relating to the registrable person or any taxable business carried on by him:

40 (1) his name, his trading name (if different), his address and the landfill sites he operates (Landfill Tax Regulations 1996, SI 1996/1527, reg 5(4)(a));

41 (2) his status, namely whether he carries on business as a sole proprietor, body corporate, partnership or other unincorporated body (reg 5(4)(b));

42 (3) in the case of a partnership, the name and address of any partner (reg 5(4)(c)).

'Taxable business' means a business or part of a business in the course of which taxable activities are carried out: reg 2(1). As to the meaning of 'taxable activity' see PARA 920 note 1. As to the meaning of 'landfill site' see PARA 902 note 5; definition applied by virtue of reg 2(1).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(2)(a).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(2)(b).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(3)(a).

- 9 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(3)(b).
- 10 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(3)(c).
- 11 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(3)(d).
- 12 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(5). The penalty is £250: see reg 5(5).
- 13 'Registered person' means a person who is registered under the Finance Act 1996 s 47 (see PARA 920); and 'register' and 'registration' must be construed accordingly: Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).
- 14 See note 13.
- 15 Landfill Tax Regulations 1996, SI 1996/1527, reg 5(6). For the purposes of reg 5(6), it is immaterial whether or not the registered person has notified the Commissioners of any change which has occurred in accordance with reg 5(1)-(3): reg 5(7).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(2) REQUIREMENT TO PROVIDE INFORMATION/923. Notification of cessation of taxable activities.

923. Notification of cessation of taxable activities.

A person who is required¹ to notify the Commissioners for Her Majesty's Revenue and Customs² of his having ceased to have the intention to carry out taxable activities³ must, within 30 days of his so having ceased, notify the Commissioners in writing and thereby inform them of:

- 98 (1) the date on which he ceased to have the intention of carrying out taxable activities⁴; and
- 99 (2) if different, the date on which he ceased to carry out taxable activities⁵.

1 le by the Finance Act 1996 s 47(4): see PARA 920.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 As to the meaning of 'taxable activity' see PARA 920 note 1.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 6(a).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 6(b).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(3) SPECIAL CASES/924. Companies and partnerships.

(3) SPECIAL CASES

924. Companies and partnerships.

The registration under the landfill tax provisions¹ of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners for Her Majesty's Revenue and Customs² see fit, be in the names of those divisions³.

Where anything is required to be done by or under the landfill tax provisions⁴ by or on behalf of a partnership, it is the joint and several responsibility of every partner; but, if it is done by one partner, that is sufficient compliance with any such requirement⁵.

1 I.e. the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 Finance Act 1996 s 58(3).

4 I.e. whether by the Landfill Tax Regulations 1996, SI 1996/1527, or otherwise: see the Finance Act 1996 s 58(1).

5 See the Finance Act 1996 s 58(1); and the Landfill Tax Regulations 1996, SI 1996/1527, reg 8(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(3) SPECIAL CASES/925. Groups of companies.

925. Groups of companies.

Where any bodies corporate are treated as members of a group¹, then for the purposes of the landfill tax provisions²:

- 100 (1) any liability of a member of the group to pay landfill tax is taken to be a liability of the representative member³;
- 101 (2) the representative member is taken to carry out any taxable activities⁴ which a member of the group would carry out⁵;
- 102 (3) all members of the group are jointly and severally liable for any tax due from the representative member⁶.

Where an application to that effect is made to the Commissioners for Her Majesty's Revenue and Customs⁷ with respect to two or more bodies corporate eligible to be treated as members of a group, then:

- 103 (a) from the beginning of an accounting period⁸ they are so treated; and
- 104 (b) one of them is the representative member,

unless the Commissioners refuse the application⁹. The Commissioners may not refuse the application unless it appears to them necessary to do so for the protection of the revenue¹⁰.

Where any bodies corporate are treated as members of a group and an application to that effect is made to the Commissioners, then, from the beginning of an accounting period:

- 105 (i) a further body eligible to be so treated is to be included among the bodies so treated¹¹;
- 106 (ii) a body corporate is to be excluded from the bodies so treated¹²;
- 107 (iii) another member of the group is to be substituted as the representative member¹³; or
- 108 (iv) the bodies corporate are no longer to be treated as members of a group¹⁴,

unless the application is to the effect mentioned in head (i) or head (iii) above and the Commissioners refuse the application¹⁵. The Commissioners may refuse an application under head (i) or head (iii) above only if it appears to them necessary to do so for the protection of the revenue¹⁶.

Such an application, with respect to any bodies corporate, must be made by one of those bodies or by the person controlling them and must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Commissioners may allow¹⁷. Where a body corporate is treated as a member of a group as being controlled by any person and it appears to the Commissioners that it has ceased to be so controlled, they must, by notice given to that person, terminate that treatment from such date as may be specified in the notice¹⁸.

¹ Two or more bodies corporate are eligible to be treated as members of a group if: (1) one of them controls each of the others; (2) one person (whether a body corporate or an individual) controls all of them; or (3) two or more individuals carrying on a business in partnership control all of them, and the prospective representative

member has an established place of business in the United Kingdom: Finance Act 1996 s 59(2), (3). For these purposes, a body corporate is taken to control another body corporate if it is empowered by statute to control that body's activities or if it is that body's holding company within the meaning of the Companies Act 2006 s 1159, Sch 6 (see **COMPANIES** vol 14 (2009) PARA 25); and an individual or individuals are taken to control a body corporate if he or they, were he or they a company, would be that body's holding company within the meaning of s 1159, Sch 6: Finance Act 1996 s 59(9) (amended by SI 2009/1890). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

2 le the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

3 Finance Act 1996 s 59(1)(a).

4 As to the meaning of 'taxable activity' see PARA 920 note 1.

5 Finance Act 1996 s 59(1)(b). The reference in the text is a reference to any taxable activities which the member would carry out (apart from s 59) by virtue of s 69 (see PARA 920 note 1).

6 Finance Act 1996 s 59(1)(c).

7 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

8 As to the meaning of 'accounting period' see PARA 928 note 17.

9 Finance Act 1996 s 59(4).

10 Finance Act 1996 s 59(4). As to the meaning of 'the protection of the revenue' in a similar provision relating to value added tax see *National Westminster Bank plc v Customs and Excise Comrs* VTD 15514. See also HM Customs and Excise Business Brief 15/99, 12 July 1999.

11 Finance Act 1996 s 59(5)(a).

12 Finance Act 1996 s 59(5)(b).

13 Finance Act 1996 s 59(5)(c).

14 Finance Act 1996 s 59(5)(d).

15 Finance Act 1996 s 59(5).

16 Finance Act 1996 s 59(6). See note 10.

17 Finance Act 1996 s 59(8).

18 Finance Act 1996 s 59(7). In relation to a similar provision for value added tax, it has been held that a company which ceases to be eligible to be part of a group remains part of the group until notice has been given under that provision: see *Customs and Excise Comrs v Barclays Bank plc* [2001] EWCA Civ 1513, [2001] STC 1558.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(3) SPECIAL CASES/926. Unincorporated bodies.

926. Unincorporated bodies.

The registration under the landfill tax provisions¹ of an unincorporated body other than a partnership may be in the name of the body concerned; and in determining whether taxable activities² are carried out by such a body no account may be taken of any change in its members³.

Where anything is required to be done by or under the landfill tax provisions⁴ by or on behalf of an unincorporated body other than a partnership, it is to be the joint and several responsibility of:

- 109 (1) every member holding office as president, chairman, treasurer, secretary or any similar office⁵; or
- 110 (2) if there is no such office, every member holding office as a member of a committee by which the affairs of the body are managed⁶; or
- 111 (3) if there is no such office or committee, every member⁷.

If it is done by any of the persons referred to above, that is sufficient compliance with any such requirement⁸. However, where an unincorporated body other than a partnership is required to make a notification in relation to registration⁹, it is not sufficient compliance unless the notification is made by a person upon whom a responsibility for making it is so imposed¹⁰.

1 Ie the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

2 As to the meaning of 'taxable activity' see PARA 920 note 1.

3 Finance Act 1996 s 58(2).

4 Ie whether by the Landfill Tax Regulations 1996, SI 1996/1527, or otherwise: see reg 8(1).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 8(1)(a).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 8(1)(b).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 8(1)(c).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 8(1). See also PARA 924.

9 Ie such a notification as is referred to in the Landfill Tax Regulations 1996, SI 1996/1527, regs 4-6: see PARAS 920, 922-923.

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 8(2). See also PARA 924 note 5.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(3) SPECIAL CASES/927. Businesses of insolvent persons.

927. Businesses of insolvent persons.

If a registrable person¹ becomes bankrupt or incapacitated², the Commissioners for Her Majesty's Revenue and Customs³ may, from the date on which he became bankrupt or incapacitated, as the case may be, treat as a registrable person any person carrying on any taxable business⁴ of his; and any legislation relating to landfill tax⁵ applies to any person so treated as though he were a registered person⁶. Any person carrying on such business as aforesaid must, within 30 days of commencing to do so, inform the Commissioners in writing of that fact and the date of the bankruptcy order or of the nature of the incapacity and the date on which it began⁷. Where the Commissioners have so treated a person carrying on a business as a registrable person, they must cease so to treat him if:

- 112 (1) the registration⁸ of the registrable person is cancelled, whether or not any other person is registered with the registration number⁹ previously allocated to him¹⁰;
- 113 (2) the bankruptcy is discharged or the incapacity ceases¹¹; or
- 114 (3) he ceases carrying on the business of the registrable person¹².

¹ As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

² In relation to a registrable person which is a company, the references in the Landfill Tax Regulations 1996, SI 1996/1527, reg 9 to the registrable person becoming incapacitated are to be construed as references to its going into liquidation or receivership or entering administration; and references to the incapacity ceasing must be construed accordingly: reg 9(4) (amended by SI 2003/2096).

³ As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

⁴ As to the meaning of 'taxable business' see PARA 922 note 5.

⁵ As to the meaning of 'landfill tax' see PARA 901.

⁶ See the Finance Act 1996 s 58(4) (amended by SI 2003/2096); and the Landfill Tax Regulations 1996, SI 1996/1527, reg 9(1). As to the meaning of 'registered person' see PARA 922 note 13.

⁷ Landfill Tax Regulations 1996, SI 1996/1527, reg 9(2).

⁸ As to the meaning of 'registration' see PARA 922 note 13.

⁹ As to the meaning of 'registration number' see PARA 928 note 9.

¹⁰ Landfill Tax Regulations 1996, SI 1996/1527, reg 9(3)(a).

¹¹ Landfill Tax Regulations 1996, SI 1996/1527, reg 9(3)(b).

¹² Landfill Tax Regulations 1996, SI 1996/1527, reg 9(3)(c).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/4. REGISTRATION AND INFORMATION/(3) SPECIAL CASES/928. Transfer of a going concern.

928. Transfer of a going concern.

Where:

- 115 (1) a taxable business¹ is transferred as a going concern²;
- 116 (2) the registration³ of the transferor has not already been cancelled⁴;
- 117 (3) as a result of the transfer of the business the registration of the transferor is to be cancelled and the transferee has become liable to be registered⁵; and
- 118 (4) an application is made on the prescribed form⁶ by both the transferor and the transferee⁷,

the Commissioners for Her Majesty's Revenue and Customs⁸ may with effect from the date of the transfer cancel the registration of the transferor and register the transferee with the registration number⁹ previously allocated to the transferor¹⁰.

Where the transferee of a business has been so registered with the registration number previously allocated to the transferor:

- 119 (a) any liability of the transferor existing at the date of the transfer to make a return¹¹ or account for or pay any landfill tax¹² becomes the liability of the transferee¹³;
- 120 (b) any entitlement of the transferor, whether or not existing at the date of the transfer, to credit¹⁴ or payment¹⁵ becomes the entitlement of the transferee¹⁶.

In addition, where the transferee of a business has been so registered with the registration number previously allocated to the transferor during an accounting period¹⁷ subsequent to that in which the transfer took place (but with effect from the date of the transfer) and any:

- 121 (i) return has been made¹⁸;
- 122 (ii) tax has been accounted for¹⁹; or
- 123 (iii) entitlement to credit has been claimed²⁰,

by either the transferor or the transferee, it must be treated as having been done by the transferee²¹.

Where:

- 124 (A) a taxable business²² is transferred as a going concern²³;
- 125 (B) the transferee removes²⁴ material²⁵; and
- 126 (C) the transferor has paid tax on the disposal concerned²⁶,

then, whether or not the transferee has been so registered with the registration number previously allocated to the transferor, any entitlement to credit arising²⁷ becomes the entitlement of the transferee²⁸.

1 As to the meaning of 'taxable business' see PARA 922 note 5.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(1)(a). There is no statutory definition of 'going concern' but it is likely that the Commissioners for Her Majesty's Revenue and Customs will take the same approach as they do to the meaning of 'going concern' in value added tax cases. See **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 210.

3 As to the meaning of 'registration' see PARA 922 note 13.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(1)(b).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(1)(c).

6 See the Landfill Tax Regulations 1996, SI 1996/1527, reg 7(1)(d), Schedule Form 4. See also PARA 920 note 4.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(1)(d).

8 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

9 'Registration number' means the identifying number allocated to a registered person and notified to him by the Commissioners: Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1). As to the meaning of 'registered person' see PARA 922 note 13.

10 See the Finance Act 1996 s 58(5), (6); and the Landfill Tax Regulations 1996, SI 1996/1527, reg 7(1). An application under reg 7(1) must be treated as the notification referred to in reg 6 (see PARA 923): reg 7(2).

11 As to the meaning of 'return' see PARA 935 note 4.

12 Ie under the Landfill Tax Regulations 1996, SI 1996/1527, Pt III (regs 10-16).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(3)(a).

14 'Credit', except where the context otherwise requires, means credit which a person is entitled to claim under the Landfill Tax Regulations 1996, SI 1996/1527, Pt IV (regs 17-20) (see PARA 938 et seq): see reg 7(3)(b).

15 Ie under the Landfill Tax Regulations 1996, SI 1996/1527, Pt IV.

16 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(3)(b).

17 'Accounting period' means: (1) in the case of a registered person, each period of three months ending on the dates notified to him by the Commissioners, whether by means of a registration certificate issued by them or otherwise; (2) in the case of a registrable person who is not registered, each quarter; or (3) in the case of any registrable person, such other period in relation to which he is required by or under the Landfill Tax Regulations 1996, SI 1996/1527, reg 11 (see PARA 935) to make a return, and, in every case, the first accounting period of a registrable person begins on the effective date of registration: reg 2(1).

As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of reg 2(1). 'Quarter' means a period of three months ending at the end of March, June, September or December: reg 2(1). 'Effective date of registration' means the date determined in accordance with the Finance Act 1996 s 47 (see PARA 920) upon which the person was or should have been registered: Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

18 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(4)(a).

19 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(4)(b).

20 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(4)(c).

21 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(4).

22 As to the meaning of 'taxable business' see PARA 922 note 5.

23 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(5)(a).

24 Ie as described in the Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2) or reg 21(4): see PARA 941.

25 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(5)(b). As to the meaning of 'material' see PARA 902 note 3.

26 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(5)(c). As to the meaning of 'disposal' see PARA 908 note 5.

27 le arising under the Landfill Tax Regulations 1996, SI 1996/1527, Pt V (reg 21): see PARA 941.

28 Landfill Tax Regulations 1996, SI 1996/1527, reg 7(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(1) LIABILITY FOR TAX/929. Persons liable.

5. ACCOUNTING AND PAYMENT

(1) LIABILITY FOR TAX

929. Persons liable.

The person liable to pay landfill tax¹ charged on a taxable disposal² is the landfill site³ operator⁴. This reference to the landfill site operator is a reference to the person who is at the time of the disposal the operator of the landfill site which constitutes or contains the land on or under which the disposal is made⁵.

1 As to the meaning of 'landfill tax' see PARA 901.

2 As to the meaning of 'taxable disposal' see PARA 902.

3 As to the meaning of 'landfill site' see PARA 902 note 5.

4 Finance Act 1996 s 41(1). The operator of a landfill site at a given time is:

43 (1) the person who is at the time concerned the holder of the licence, where s 66(a) (see PARA 902 note 5) applies (s 67(a));

44 (2) the waste disposal authority which at the time concerned occupies the landfill site, where s 66(b) (see PARA 902 note 5) applies (s 67(b));

45 (3) the person who is at the time concerned the holder of the permit, where s 66(ba) (see PARA 902 note 5) applies (s 67(ba) (added by SI 2000/1973));

46 (4) the person who is at the time concerned the holder of the licence, where the Finance Act 1996 s 66(c) (see PARA 902 note 5) applies (s 67(c));

47 (5) the district council which passed the resolution, where s 66(d) (see PARA 902 note 5) applies (s 67(d));

48 (6) the person who is at the time concerned the holder of the licence, where s 66(e) (see PARA 902 note 5) applies (s 67(e)).

As to the secondary liability of the controller of a landfill site to pay landfill tax see Sch 5 Pt VIII paras 48-61; and PARA 930.

5 Finance Act 1996 s 41(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(1) LIABILITY FOR TAX/930. Secondary liability of controllers of landfill sites.

930. Secondary liability of controllers of landfill sites.

Where (1) a taxable disposal is made at a landfill site¹; (2) at the time when that disposal is made a person is the operator of the landfill site²; and (3) at that time a different person is the controller of the whole or part of the landfill site³, the controller is liable to pay to the Commissioners for Her Majesty's Revenue and Customs⁴ an amount of the landfill tax chargeable on the disposal⁵.

The amount so chargeable (the 'relevant amount') is payable to the Commissioners only if a notice containing specified information⁶ is served on the controller, or other reasonable steps are taken with a view to bringing the required information to his attention, before the end of two years beginning with the day immediately following the relevant accounting day⁷.

Where an amount of landfill tax is assessed⁸ and notified to a licensed operator⁹, the Commissioners may also determine that a controller of the whole or part of any landfill site operated by that operator is liable to pay so much of the amount assessed as they consider just and equitable¹⁰. Amounts paid under these provisions are deemed to be an amount of tax due from the controller and are recoverable accordingly¹¹.

1 As to the meaning of 'landfill site' see PARA 902 note 5.

2 ie by virtue of the Finance Act 1996 s 67(a), (c) or (e): see PARA 929.

3 A person is the controller of the whole, or a part, of a landfill site at a given time if he determines, or is entitled to determine, what disposals of material, if any, may be made at every part of the site at that time, or at that part of the site at that time, as the case may be; but a person who, because he is the employee or agent of another, has such power of, or such entitlement to, determination is not such a controller: Finance Act 1996 s 60 (amended by the Finance Act 2000 s 142(1), (2)); Finance Act 1996 Sch 5 para 48 (Sch 5 Pt VIII paras 48-61 added by the Finance Act 2000 s 142(3), Sch 37).

Where a person becomes, or ceases to be, a controller of the whole or part of a landfill site, the controller and the operator of that site must notify the Commissioners for Her Majesty's Revenue and Customs (see note 4), within 30 days beginning with the day immediately following the date of the change: (1) that a person has become or has ceased to be a controller; (2) of the identity of that person; and (3) of the date of the commencement or cessation: Finance Act 1996 Sch 5 para 60(1)-(3) (as so added). Amounts paid under these provisions are deemed to be an amount of tax due from him and are recoverable accordingly: Sch 5 para 55 (as so added). Failure to comply is visited with a penalty of £250, and results in the extension of the two-year time limit for the giving of notice of liability (or of the taking of reasonable steps to do so) to 20 years: Sch 5 paras 60(4), 61(2) (as so added).

4 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

5 Finance Act 1996 Sch 5 para 49(1) (as added: see note 3). For the purposes of heads (2) and (3) in the text, s 61 (see PARA 904) and any regulations made under s 62 (repealed) do not apply for determining the time when the disposal in question is made: Sch 5 para 49(8) (as so added).

The controller of the whole of the site is liable to pay the whole of the tax; the controller of part of the site is liable to pay the amount which would have been chargeable had a separate taxable disposal consisting of a specified amount of material been made at the time of the disposal mentioned in head (1) in the text: Sch 5 para 49(2)-(5) (as so added). The specified amount is the amount by weight of the material comprised in that disposal which was disposed of on the part of the site under his control (and if this amount is nil, the controller's liability is also nil): Sch 5 para 49(6), (7) (as so added). Where: (1) the operator of a landfill site is liable to pay landfill tax on a taxable disposal by reference to a particular accounting period; (2) a controller of the whole or a part of that site is otherwise liable to pay an amount of that tax under Sch 5 para 49; and (3) for the accounting period in question the operator is entitled to credit under regulations made under s 51 (see PARA 938 et seq), the amount of the tax which the controller is otherwise liable to pay is reduced by a specified formula: see Sch 5 para 50(1)-(4) (as so added). If the amount of the reduction is greater than the amount chargeable, the liability is nil: Sch 5 para 50(5) (as so added).

6 The specified information is the relevant amount and, if that amount has been reduced (see note 5): (1) the amount of the controller's unreduced liability; (2) the amount of credit to which he is entitled; and (3) the operator's gross tax liability: Finance Act 1996 Sch 5 para 51(6) (as added: see note 3).

7 Finance Act 1996 Sch 5 para 51(1), (2) (as added: see note 3). The relevant accounting day is the last day of the accounting period by reference to which the landfill site operator liable to pay the landfill tax in question is required to account for that tax: Sch 5 para 51(3) (as so added). If the controller is required under Sch 5 para 51 to pay the relevant amount, payment must be made before the end of the period of 30 days beginning with the day immediately following the day on which the notice is served (or the day on which the last of the 'other reasonable steps' is taken) (the 'notification day'): Sch 5 para 51(4), (5) (as so added).

8 Ie under the Finance Act 1996 s 50: see PARA 959.

9 Ie a person who is the operator of a landfill site by virtue of the Finance Act 1996 s 67(a), (c) or (e): see PARA 929.

10 Finance Act 1996 Sch 5 para 52(1), (6) (as added: see note 3). Payment is to be made as set out in the text to notes 6, 7: see Sch 5 para 52(2)-(5) (as so added). Where the relevant assessment is withdrawn or reduced, the Commissioners may determine that the controller's liability is cancelled, or reduced to such an amount as they consider to be just and equitable: Sch 5 para 53(1)-(3) (as so added). If notice has already been given to the controller of the liability which is so cancelled or reduced (or reasonable steps have been taken to do so), the Commissioners must notify him (or take reasonable steps to do so) within the period of 30 days beginning with the day immediately following that on which they make the determination that the liability is cancelled or reduced: Sch 5 para 53(4)(a), (6), (7) (as so added). Any amount so reduced is then payable (or treated as having been payable) on or before the day on which the original, unreduced amount was so payable: Sch 5 para 53(4)(b) (as so added). However, where notice of an amount which has been reduced has not been given (or reasonable steps taken to do so), the controller is only liable to pay if notice of the reduced amount is given (or reasonable steps taken) before the expiry of the period of two years beginning with the day immediately following that on which the Commissioners make their determination: Sch 5 para 53(5) (as so added).

Where the liability of a licensed operator is adjusted otherwise than by his being entitled to credit, by assessment, or by the withdrawal or reduction of an assessment, the Commissioners may determine that a controller of the whole or any part of a landfill site operated by him is liable to pay (or is entitled to an allowance of) such an amount as they consider just and equitable: Sch 5 para 54(1), (2) (as so added). Notification and payment are as set out in the text to notes 6, 7: Sch 5 para 54(3)-(8) (as so added).

Where:

- 49 (1) (a) the operator of a landfill site is liable under s 41 (see PARA 929) for landfill tax; and (b) a controller is liable under Sch 5 para 49 (see note 5) to pay an amount of that tax (whether or not reduced under Sch 5 para 50 (see note 5));
- 50 (2) (a) the operator of a landfill site is notified of an amount of an assessment under s 50 (see PARA 959); and (b) in consequence of a determination made by the Commissioners under Sch 5 para 52 a controller is liable to pay an amount (whether or not reduced under Sch 5 para 53); or
- 51 (3) (a) the liability of the operator of a landfill site to pay landfill tax is adjusted so that Sch 5 para 54 applies; and (b) in consequence of a determination made by the Commissioners under Sch 5 para 54(2)(a) in connection with the adjustment a controller is liable to pay an amount,

then the controller and the operator are jointly and severally liable for the principal liability (ie the amount payable under heads (1)(a), (2)(a) and (3)(a)) but the amount recoverable from the controller must not exceed the amount of the secondary liability (ie the amount payable under heads (1)(b), (2)(b) and (3)(b)): Sch 5 para 57 (as so added). Similarly, the operator of a landfill site and the controller of the whole or a part of that site are jointly and severally liable for any interest payable on the amount due, but the amount recoverable from the latter must not exceed the amount calculated in accordance with the specified formula: Sch 5 para 58(1)-(3) (as so added). The controller is liable for an amount of interest only if notice is served on him in accordance with the text to notes 6, 7, and payment is to be made accordingly. The provisions of Sch 5 para 28 (see PARA 999) apply for these purposes as they apply for those of Sch 5 para 27 (see PARA 998): Sch 5 para 58 (as so added).

11 Finance Act 1996 Sch 5 para 55 (as added: see note 3). The controller is not, however, to be treated for the purposes of the Finance Act 1996 as carrying out a taxable activity by reason only of any liability under Sch 5 Pt VIII: Sch 5 para 56 (as so added).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(2) RECORDS/931. Power to require records to be kept by registrable persons.

(2) RECORDS

931. Power to require records to be kept by registrable persons.

Regulations may require registrable persons¹ to make records². Such regulations may be framed by reference to such records as may be stipulated in any notice published by the Commissioners for Her Majesty's Revenue and Customs³ in pursuance of the regulations and not withdrawn by a further notice⁴. Regulations may:

- 127 (1) require registrable persons to preserve records of a prescribed⁵ description (whether or not the records are required to be made in pursuance of regulations) for such period not exceeding six years as may be specified in the regulations⁶;
- 128 (2) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations⁷;
- 129 (3) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate⁸.

Any duty under regulations to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve; and, where that information is so preserved, a copy of any document forming part of the records is admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves⁹. The Commissioners may, as a condition of so approving any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved¹⁰.

1 As to the meaning of 'registrable person' see PARA 958 note 1.

2 Finance Act 1996 s 60, Sch 5 para 2(1). As to the regulations made under Sch 5 para 2 see the Landfill Tax Regulations 1996, SI 1996/1527, reg 16; and PARA 933.

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 Finance Act 1996 Sch 5 para 2(2).

5 'Prescribed' means prescribed by an order or regulations under the Finance Act 1996 Pt III (ss 39-71): s 70(1).

6 Finance Act 1996 Sch 5 para 2(3)(a).

7 Finance Act 1996 Sch 5 para 2(3)(b).

8 Finance Act 1996 Sch 5 para 2(3)(c).

9 Finance Act 1996 Sch 5 para 2(4), which is expressed to be subject to Sch 5 para 2(5)-(7). Provisions as to admissibility in evidence are contained in Sch 5 para 2(6), most of which (except for Sch 5 para 2(6)(b), (c), in regard to proceedings in Scotland) is repealed. The Finance Act 1996 provides that, in the case of civil proceedings in England and Wales to which the Civil Evidence Act 1968 ss 5, 6 apply, a statement contained in a document produced by a computer is not admissible in evidence by virtue of the Finance Act 1996 Sch 5 para 2(4) except in accordance with the Civil Evidence Act 1968 ss 5, 6: see the Finance Act 1996 Sch 5 para 2(7). However, the Civil Evidence Act 1968 ss 5, 6 have been repealed. As to proof of statements and records of business see the Civil Evidence Act 1995 ss 8, 9; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 816-817.

As from a day to be appointed the Finance Act 1996 Sch 5 para 2(4) is to be substituted by the Finance Act 2009 s 98, Sch 50 para 21 so that a duty under regulations to preserve records may be discharged by preserving them, or the information contained in them, in any form and by any means, subject to any conditions or exceptions specified in writing by the Commissioners. As from the same date the Finance Act 1996 Sch 5 para 2(5)-(7) is to be repealed. At the date at which this volume states the law no such day had been appointed.

10 Finance Act 1996 Sch 5 para 2(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(2) RECORDS/932. Landfill tax account.

932. Landfill tax account.

Every registrable person¹ must make and maintain an account to be known as the 'landfill tax account'². The landfill tax account must be in such form and contain such particulars as may be stipulated in a notice published by the Commissioners for Her Majesty's Revenue and Customs³ and not withdrawn by a further notice⁴.

1 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 12(1).

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 12(2). See Notice LFT1.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(2) RECORDS/933. Records required to be kept by registrable persons.

933. Records required to be kept by registrable persons.

Every registrable person¹ must, for the purpose of accounting for landfill tax², preserve the following:

- 130 (1) his business and accounting records³;
- 131 (2) his landfill tax account⁴;
- 132 (3) transfer notes⁵ and any other original or copy records in relation to material⁶ brought onto or removed from the landfill site⁷;
- 133 (4) all invoices (including landfill invoices⁸) and similar documents issued to him and copies of such invoices and similar documents issued by him⁹;
- 134 (5) all credit or debit notes or other documents received by him which evidence an increase or decrease in the amount of any consideration for a relevant transaction, and copies of such documents that are issued by him¹⁰;
- 135 (6) such other records as the Commissioners for Her Majesty's Revenue and Customs¹¹ may specify in a notice published by them and not withdrawn by a further notice¹².

In general, every registrable person must preserve the records specified in heads (1) to (6) above for a period of six years¹³. However, a registrable person who has made a landfill tax bad debt account¹⁴ is to preserve that account for a period of five years from the date of the claim made under the regulations¹⁵. The Commissioners have power to direct that registrable persons must preserve the records specified in heads (1) to (6) above for a shorter period than that specified; and such direction may be made so as to apply generally or in such cases as the Commissioners may stipulate¹⁶.

1 As to the meaning of 'registrable person' see PARA 958 note 1.

2 As to the meaning of 'landfill tax' see PARA 901.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(1)(a).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(1)(b). As to the meaning of 'landfill tax account' see PARA 932.

5 As to the meaning of 'transfer note' see the Environmental Protection (Duty of Care) Regulations 1991, SI 1991/2839, reg 2; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1) (as substituted by SI 2004/769). As to the Environmental Protection (Duty of Care) Regulations 1991, SI 1991/2839. see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 645.

6 As to the meaning of 'material' see PARA 902 note 3.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(1)(c) (amended by SI 2009/1930). This includes any record made on or before 31 August 2009 for the purpose of the Landfill Tax Regulations 1996, SI 1996/1527, Pt IX (regs 38-40) (revoked) before that Part was revoked with effect from 1 September 2009 and any record made for the purpose of reg 16A (information areas: see PARA 972): reg 16(1)(c) (as so amended). As to the meaning of 'landfill site' see PARA 902 note 5; definition applied by virtue of reg 2(1). The reference to material being brought onto a landfill site is a reference to material that is brought onto the site for the purpose of a relevant transaction: reg 16(5)(a). The reference to material being removed from a landfill site is a reference to material being removed that has at some previous time fallen wholly or partly within reg 16(5)(a): reg 16(5)(b). 'Relevant transaction' means a disposal or anything that would be a disposal but for the fact that the material is not disposed of as waste: reg 16(6). As to the meaning of 'disposal' see PARA 908 note 5. As to the meaning of 'disposal of material as waste material' see PARA 902 note 3.

8 An invoice is a landfill invoice if it contains the following information:

- 52 (1) an identifying number (Landfill Tax Regulations 1996, SI 1996/1527, reg 37(1)(a));
- 53 (2) the date of its issue (reg 37(1)(b));
- 54 (3) the date of the disposal or disposals in respect of which it is issued or, where a series of disposals is made for the same person, the dates between which the disposals were made (reg 37(1)(c));
- 55 (4) the name, address and registration number of the person issuing it (reg 37(1)(d));
- 56 (5) the name and address of the person to whom it is issued (reg 37(1)(e));
- 57 (6) the weight of the material disposed of (reg 37(1)(f));
- 58 (7) a description of the material disposed of (reg 37(1)(g));
- 59 (8) the rate of tax chargeable in relation to the disposal or, if the invoice relates to more than one disposal and the rate of tax for each of them is not the same, the rate of tax chargeable for each disposal (reg 37(1)(h));
- 60 (9) the total amount payable for which the invoice is issued (reg 37(1)(i)); and
- 61 (10) where the amount of tax is shown separately, a statement confirming that that tax may not be treated as the input tax of any person (reg 37(1)(j)).

As to the meaning of 'registration number' see PARA 928 note 9. As to the determination of the weight of the material disposed of see PARA 907.

As to the meaning of 'input tax' see the Value Added Tax Act 1994 s 24(1); and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 4 (definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 37(2)).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(1)(d).

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(1)(e).

11 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(1)(f).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(2).

14 As to the meaning of 'landfill tax bad debt account' see PARA 945.

15 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(3).

16 Landfill Tax Regulations 1996, SI 1996/1527, reg 16(4). As to the penalty for failure to comply with this regulation see PARA 991.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(2) RECORDS/934. Power to require records relating to material at landfill sites to be kept.

934. Power to require records relating to material at landfill sites to be kept.

Regulations may require a person to make records relating to material¹ at a landfill site² or a part of a landfill site³. Such regulations may make provisions about records relating to what is done with material⁴.

1 As to the meaning of 'material' see PARA 902 note 3.

2 As to the meaning of 'landfill site' see PARA 902 note 5.

3 Finance Act 1996 s 60, Sch 5 para 2A(1) (Sch 5 para 2A added by the Finance Act 2009 s 119, Sch 60 para 9). The Finance Act 1996 Sch 5 para 2(2)-(7) (see PARA 931) applies in relation to regulations under Sch 5 para 2A as it applies in relation to regulations under Sch 5 para 2: Sch 5 para 2A(3) (as so added). In the application of Sch 5 para 2(3)(a) in relation to regulations under Sch 5 para 2A, the reference to registrable persons has effect as a reference to persons: Sch 5 para 2A(4) (as so added).

4 Finance Act 1996 Sch 5 para 2A(2) (as added: see note 3). As to the penalty for failure to comply with this requirement see PARA 991.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(3) RETURNS/935. Making of returns.

(3) RETURNS

935. Making of returns.

Subject as mentioned below and save as the Commissioners for Her Majesty's Revenue and Customs¹ may otherwise allow, a registrable person² must, in respect of each accounting period³, make a return to the Controller, Central Collection Unit (LT) in a form determined by the Commissioners in a public notice⁴. Subject as mentioned below, a registrable person must make each return not later than the last working day⁵ of the month next following the end of the period to which it relates⁶. Where the Commissioners consider it necessary in the circumstances of any particular case, they may:

- 136 (1) vary the length of any accounting period or the date on which it begins or ends or by which any return must be made⁷;
- 137 (2) allow or direct the registrable person to make a return in accordance with head (1) above⁸;
- 138 (3) allow or direct a registrable person to make returns to a specified address⁹.

Any person to whom the Commissioners give any such direction must comply with it¹⁰.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

3 As to the meaning of 'accounting period' see PARA 928 note 17; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 10.

4 See the Finance Act 1996 s 49; and the Landfill Tax Regulations 1996, SI 1996/1527, reg 11(1) (amended by SI 2009/1930). 'Return' means a return which is required to be made in accordance with the Landfill Tax Regulations 1996, SI 1996/1527, reg 11: reg 2(1). The form is LT100 and is contained in HMRC Notice LFT1, Section 20.

5 'Working day' means any day of the week except Saturday and Sunday and a bank holiday or public holiday, in either case, for England: Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 11(2).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 11(3)(a).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 11(3)(b).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 11(3)(c).

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 11(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(3) RETURNS/936. Correction of errors.

936. Correction of errors.

The following provisions apply where a registrable person¹ has made a return² which was inaccurate as the result of an overdeclaration³ or underdeclaration⁴.

Where in any accounting period:

- 139 (1) a registrable person discovers one or more overdeclarations or underdeclarations⁵; and
- 140 (2) having treated the amount of those overdeclarations or underdeclarations as reduced by the amount respectively of any underdeclarations or overdeclarations for the same accounting periods, the total of those overdeclarations or underdeclarations does not exceed £50,000 or a specified alternative amount⁶,

he may enter the overdeclarations or underdeclarations in his return for the accounting period in which they were discovered by including their amount in the boxes for overdeclarations and underdeclarations as appropriate⁷. Where a registrable person so enters an amount in a return he must calculate the landfill tax payable by him or the payment to which he is entitled accordingly⁸.

Where an amount has been so entered in a return which has been made:

- 141 (a) the return is to be regarded as correcting any earlier return to which that amount relates⁹; and
- 142 (b) the registrable person is to be taken to have furnished information with respect to the inaccuracy in the prescribed¹⁰ form and manner¹¹.

No amount must be entered in a return in respect of any overdeclaration or underdeclaration except in accordance with this provision¹².

1 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

2 As to the meaning of 'return' see PARA 935 note 4.

3 'Overdeclaration' means, in relation to any return, the amount (if any) which was wrongly treated as landfill tax due for the accounting period concerned and which caused the amount of tax which was payable to be overstated, or the entitlement to a payment under the Landfill Tax Regulations 1996, SI 1996/1527, reg 20 (see PARA 940) to be understated (or both) or would have caused such an overstatement or understatement were it not for the existence of an underdeclaration in relation to that return: reg 13(1). As to the meaning of 'landfill tax' see PARA 901. As to the meaning of 'accounting period' see PARA 928 note 17; definition applied by virtue of reg 10.

'Underdeclaration' means, in relation to any return, the aggregate of: (1) the amount (if any) of tax due for the accounting period concerned which was not taken into account; and (2) the amount (if any) which was wrongly deducted as credit, and which caused the amount of tax which was payable to be understated, or the entitlement to a payment under reg 20 to be overstated (or both), or would have caused such an understatement or overstatement were it not for the existence of an overdeclaration in relation to that return: reg 13(1).

As to the meaning of 'credit' see PARA 928 note 14.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(2).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(4)(a) (reg 13(4) amended by SI 2008/1482; SI 2008/2693; SI 2009/1930).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(4)(b) (as amended: see note 5). If the registrable person's VAT turnover is small, the total mentioned in head (2) in the text must not exceed 1% of that turnover unless the total is £10,000 or less; if that person is not registered for VAT, the total must not exceed £10,000; and VAT turnover is 'small' only if Box 6 (total value of sales and all other outputs excluding any value added tax) of that person's value added tax return for the prescribed accounting period in which the discovery is made contains a total less than £5,000,000: reg 13(4) (as so amended). As to registration for VAT and value added tax returns for prescribed accounting periods see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 64 et seq, 247.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(4) (as amended: see note 5).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(5) (amended by SI 2008/1482).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(6)(a).

10 le for the purposes of the Finance Act 1996 s 60, Sch 5 para 20 (repealed).

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 13(6)(b).

12 See the Landfill Tax Regulations 1996, SI 1996/1527, reg 13(7). As regards any underdeclaration that cannot be corrected under reg 13(4), a person is not to be taken to have furnished information with respect to an inaccuracy in the prescribed form and manner for the purposes of the Finance Act 1996 Sch 5 para 20 (repealed) unless he provides such information to the Commissioners in writing: Landfill Tax Regulations 1996, SI 1996/1527, reg 13(7).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/5. ACCOUNTING AND PAYMENT/(4) PAYMENT OF TAX/937. Requirement to pay tax.

(4) PAYMENT OF TAX

937. Requirement to pay tax.

Save as the Commissioners for Her Majesty's Revenue and Customs¹ may otherwise allow or direct, any person required to make a return² must pay to the Controller, Central Collection Unit (LT), such amount of landfill tax³ as is payable by him in respect of the accounting period⁴ to which the return relates no later than the last day on which he was required to make the return⁵.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 As to the meaning of 'return' see PARA 935 note 4.

3 As to the meaning of 'landfill tax' see PARA 901.

4 As to the meaning of 'accounting period' see PARA 928 note 17; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 10.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 15.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(1) CLAIMING OF CREDIT/938. Relevant provisions.

6. CREDIT FOR TAX

(1) CLAIMING OF CREDIT

938. Relevant provisions.

Part IV of the Landfill Tax Regulations 1996¹ applies to entitlements to credit arising under Part V², Part VI³ or Part VII⁴ of the Landfill Tax Regulations 1996⁵. No credit arising under any provision of the Landfill Tax Regulations 1996 may be claimed except in accordance with Part IV⁶.

1 Ie the Landfill Tax Regulations 1996, SI 1996/1527, Pt IV (regs 17-20) (see PARAS 939-940): see reg 18(1). Any reference in the Landfill Tax Regulations 1996 to 'this Part' is a reference to the Part of the Regulations in which that reference is made: reg 2(3). The power to make regulations as to entitlements to credit is contained in the Finance Act 1996 s 51 (general: see PARA 938 et seq), s 52 (bad debts: see PARA 942 et seq), s 53 (bodies concerned with the environment: see PARA 949 et seq).

2 Ie the Landfill Tax Regulations 1996, SI 1996/1527, reg 21: see PARA 941.

3 Ie the Landfill Tax Regulations 1996, SI 1996/1527, regs 22-29: see PARA 942 et seq.

4 Ie the Landfill Tax Regulations 1996, SI 1996/1527, regs 30-36: see PARA 949 et seq.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 18(1).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 18(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(1) CLAIMING OF CREDIT/939. Method of claiming credit.

939. Method of claiming credit.

A person entitled to credit¹ may claim it by deducting its amount from any landfill tax² due from him for the relevant accounting period³ or any subsequent accounting period and, where he does so, he must make his return⁴ for that accounting period accordingly⁵.

The Commissioners for Her Majesty's Revenue and Customs⁶ may make directions generally or with regard to particular cases prescribing rules in accordance with which credit may or must be held over to be credited in an accounting period subsequent to the relevant accounting period⁷. Where such a direction has been made that credit, subject to any subsequent such direction varying or withdrawing the rules, may only be claimed in accordance with those rules⁸.

1 As to the meaning of 'credit' see PARA 938.

2 As to the meaning of 'landfill tax' see PARA 901.

3 'Relevant accounting period' means: (1) in the case of an entitlement to credit arising under the Landfill Tax Regulations 1996, SI 1996/1527, Pt V (reg 21) (see PARA 941), the accounting period in which the re-use condition or, as the case may be, the enforced removal condition was satisfied; (2) in the case of an entitlement to credit arising under Pt VI (regs 22-29) (see PARA 942 et seq), the accounting period in which the period of one year from the date of the issue of the landfill invoice expired; (3) in the case of an entitlement arising under Pt VII (regs 30-36) (see PARA 949 et seq), the accounting period in which the qualifying contribution was made: reg 17. As to the meaning of 'accounting period' see PARA 928 note 17. As to the meaning of 'landfill invoice' see PARA 933 note 8.

4 As to the meaning of 'return' see PARA 935 note 4.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 19(1). Where the entitlement to credit arises under Pt VII (see PARA 949 et seq), reg 19(1) applies as if, instead of any subsequent accounting period, it referred to any subsequent accounting period in the same contribution year as determined in relation to that person under reg 31 (see PARA 950): reg 19(2).

6 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 19(2).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 19(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(1) CLAIMING OF CREDIT/940. Payments in respect of credit.

940. Payments in respect of credit.

Where the total credit¹ claimed by a registrable person² exceeds the total of the landfill tax³ due from him for the accounting period⁴, the Commissioners for Her Majesty's Revenue and Customs⁵ must pay to him an amount equal to the excess⁶.

Where the Commissioners have cancelled the registration of a person⁷, and he is not a registrable person, he must make any claim in respect of credit by making an application in writing⁸. A person making such an application must furnish to the Commissioners full particulars in relation to the credit claimed, including (but not restricted to):

- 143 (1) except in the case of an entitlement to credit for payments to bodies concerned with the environment arising under Part VII of the Landfill Tax Regulations 1996⁹, the return in which the relevant tax¹⁰ was accounted for¹¹;
- 144 (2) except in the case of an entitlement to credit concerned with the environment arising under Part VII, the amount of the tax and the date and manner of its payment¹²;
- 145 (3) the events by virtue of which the entitlement to credit arose¹³.

Where the Commissioners are satisfied that a person who has made such a claim is entitled to credit, and that he has not previously had the benefit of that credit, they must pay to him an amount equal to the credit¹⁴.

The Commissioners are not liable to make any payment under the above provisions unless and until the person has made all the returns which he was required to make¹⁵.

1 As to the meaning of 'credit' see PARA 938.

2 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

3 As to the meaning of 'landfill tax' see PARA 901.

4 As to the meaning of 'accounting period' see PARA 928 note 17.

5 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(1). This is subject to reg 20(5) (due making of returns: see the text to note 15): reg 20(1).

7 Ie in accordance with the Finance Act 1996 s 47(6): see PARA 920.

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(2).

9 Ie the Landfill Tax Regulations 1996, SI 1996/1527, Pt VII (regs 30-36): see PARA 949 et seq.

10 'Relevant tax' means the tax, if any, that was required to have been paid as a condition of the entitlement to credit: Landfill Tax Regulations 1996, SI 1996/1527, reg 17.

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(3)(a).

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(3)(b).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(3)(c).

- 14 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(4).
- 15 Landfill Tax Regulations 1996, SI 1996/1527, reg 20(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(2) CREDIT FOR RECYCLING, INCINERATION AND PERMANENT REMOVALS/941. Entitlement to credit.

(2) CREDIT FOR RECYCLING, INCINERATION AND PERMANENT REMOVALS

941. Entitlement to credit.

An entitlement to credit¹ arises² where:

- 146 (1) a registered person³ has accounted for an amount of landfill tax⁴ and, except where the removal by virtue of which head (2) below is satisfied takes place in the accounting period⁵ in which credit for recycling, incineration or permanent removal arising under Part V of the Landfill Tax Regulations 1996⁶ is claimed in accordance with Part IV of the Landfill Tax Regulations 1996⁷, he has paid that tax⁸; and
- 147 (2) in relation to the disposal⁹ on which that tax was charged, either the re-use condition has been satisfied¹⁰ or the enforced removal condition has been satisfied¹¹.

The re-use condition is satisfied where:

- 148 (a) the disposal has been made with the intention that the material¹² comprised in it
 - 9
 - 12. (i) would be recycled or incinerated¹³; or
 - 13. (ii) removed for use (other than by way of a further disposal) at a place other than a relevant site¹⁴; or
 - 14. (iii) removed for use in restoration of a relevant site and the material involved has previously been used to create or maintain temporary hard standing¹⁵, to create or maintain a temporary screening bund¹⁶ or to create or maintain a temporary haul road¹⁷;
- 10
 - 149 (b) that material, or some of it, has been recycled, incinerated or permanently removed from the landfill site, as the case may be, in accordance with that intention¹⁸;
 - 150 (c) that recycling, incineration or removal has taken place no later than one year after the date of the disposal¹⁹, or where water had been added to the material in order to facilitate its disposal, has taken place no later than five years after the date of the disposal²⁰; and
 - 151 (d) the registered person has, before the disposal, notified the Commissioners for Her Majesty's Revenue and Customs²¹ in writing that he intends to make one or more removals of material in relation to which heads (a) to (c) above will be satisfied²².

The enforced removal condition is satisfied where:

- 152 (A) the disposal is in breach of the terms of the licence, resolution or permit, as the case may be, by virtue of which the land constitutes a landfill site²³;

- 153 (B) the registered person has been directed to remove the material comprised in the disposal, or some of it, by a relevant authority²⁴ and he has removed it, or some of it²⁵; and
- 154 (C) a further taxable disposal²⁶ of the material has been made and, except where the registered person is the person liable for the tax chargeable on that further disposal, he has paid to the site operator²⁷ an amount representing that tax²⁸.

The amount of the credit for recycling, incineration or permanent removal arising under Part V of the Landfill Tax Regulations 1996 must be equal to the tax that was charged on the disposal; except that where only some of the material comprised in that disposal is removed, the amount of the credit must be such proportion of that tax as the material removed forms of the total of the material²⁹.

1 As to the meaning of 'credit' see PARA 938.

2 Ie under the Landfill Tax Regulations 1996, SI 1996/1527, Pt V (reg 21): see reg 21(1); and PARA 938 note 2.

3 As to the meaning of 'registered person' see PARA 922 note 13.

4 As to the meaning of 'landfill tax' see PARA 901.

5 As to the meaning of 'accounting period' see PARA 928 note 17.

6 Ie the Landfill Tax Regulations 1996, SI 1996/1527, Pt V (reg 21).

7 Ie the Landfill Tax Regulations 1996, SI 1996/1527, Pt IV (regs 17-20) (see PARAS 938-940): see reg 21(1).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(1)(a).

9 As to the meaning of 'disposal' see PARA 908 note 5.

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(1)(b)(i).

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(1)(b)(ii).

12 As to the meaning of 'material' see PARA 902 note 3.

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(a)(i).

14 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(a)(ii). A 'relevant site' is the landfill site at which the disposal was made or any other landfill site: reg 21(3). As to the meaning of 'landfill site' see PARA 902 note 5; definition applied by virtue of reg 2(1).

15 'Hard standing' means a base within a landfill site on which any landfill site activity such as sorting, treatment, processing, storage or recycling is carried out: Landfill Tax Regulations 1996, SI 1996/1527, reg 21(7) (added by SI 2009/1930). As to the meaning of 'landfill site activity' see PARA 903 note 1.

16 'Screening bund' means any structure on a landfill site (whether below or above ground) put in place to protect or conceal any landfill site activity or to reduce nuisance from noise: Landfill Tax Regulations 1996, SI 1996/1527, reg 21(7) (as added: see note 15).

17 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(a)(iii) (added by SI 2009/1930). 'Haul road' means any road within the landfill site which give access to a disposal area. A 'disposal area' means any area of a landfill site where any disposal takes place: Landfill Tax Regulations 1996, SI 1996/1527, reg 21(7) (as added: see note 15).

18 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(b).

19 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(c)(i).

20 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(c)(ii).

- 21 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 22 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(2)(d).
- 23 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(4)(a) (amended by SI 2005/759).
- 24 The following are relevant authorities:
- 62 (1) the Environment Agency (Landfill Tax Regulations 1996, SI 1996/1527, reg 21(5)(a));
 - 63 (2) the Scottish Environment Protection Agency (reg 21(5)(b));
 - 64 (3) the Department of the Environment for Northern Ireland (reg 21(5)(c));
 - 65 (4) a district council in Northern Ireland (reg 21(5)(d)).
- As to the meaning of 'Environment Agency' see PARA 912 note 10. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to the meaning of 'Scottish Environment Protection Agency' see PARA 912 note 11.
- 25 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(4)(b).
- 26 As to the meaning of 'taxable disposal' see PARA 902.
- 27 As to the meaning of 'landfill site operator' see PARA 929 note 4.
- 28 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(4)(c).
- 29 Landfill Tax Regulations 1996, SI 1996/1527, reg 21(6).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/942. Entitlement to credit.

(3) CREDIT FOR BAD DEBTS

942. Entitlement to credit.

An entitlement to credit¹ arises² where:

- 155 (1) a registered person³ has carried out a taxable activity⁴ for a consideration in money for a customer⁵ with whom he is not connected⁶;
- 156 (2) he has accounted for and paid landfill tax⁷ on the disposal⁸ concerned⁹;
- 157 (3) the whole or any part of the consideration for the disposal has been written off in his accounts as a bad debt¹⁰;
- 158 (4) he has issued a landfill invoice¹¹ in respect of the disposal which shows the amount of tax chargeable¹²;
- 159 (5) that invoice was issued:
- 11
 - 15. (a) within 14 days of the date of the disposal¹³; or
 - 16. (b) within such other period as may have been specified in a direction of the Commissioners for Her Majesty's Revenue and Customs¹⁴;
- 12
 - 160 (6) a period of one year (beginning with the date of the issue of that invoice) has elapsed¹⁵; and
 - 161 (7) the provisions of Part VI of the Landfill Tax Regulations 1996¹⁶ have been complied with¹⁷.

1 As to the meaning of 'credit' see PARA 938.

2 Ie under the Landfill Tax Regulations 1996, SI 1996/1527, Pt VI (regs 22-29): see reg 23; and PARA 938 note 1.

3 As to the meaning of 'registered person' see PARA 922 note 13.

4 As to the meaning of 'taxable activity' see PARA 920 note 1.

5 'Customer' means a person for whom a taxable activity is carried out by the claimant: Landfill Tax Regulations 1996, SI 1996/1527, reg 22. 'Claim' means a claim in accordance with Pt IV (regs 17-20) for an amount of credit arising under Pt VI (see PARA 942 et seq); and 'claimant' must be construed accordingly: reg 22.

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(a). Any question whether a person is connected with another is determined in accordance with the Income and Corporation Taxes Act 1988 s 839 (see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1258): Landfill Tax Regulations 1996, SI 1996/1527, reg 2(2).

7 As to the meaning of 'landfill tax' see PARA 901.

8 As to the meaning of 'disposal' see PARA 908 note 5.

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(b).

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(c). See PARA 948.

11 As to the meaning of 'landfill invoice' see PARA 933 note 8.

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(d).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(e)(i).

14 le made under the Finance Act 1996 s 61(3) (see PARA 904): see the Landfill Tax Regulations 1996, SI 1996/1527, reg 23(e)(ii). As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

15 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(f).

16 le the Landfill Tax Regulations 1996, SI 1996/1527, Pt VI (see PARA 942 et seq): see reg 23(g); and PARA 938 note 1.

17 Landfill Tax Regulations 1996, SI 1996/1527, reg 23(g).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/943. Amount of credit.

943. Amount of credit.

The credit¹ arising in cases of bad debt² is to be of an amount equal to such proportion of the landfill tax³ charged on the relevant disposal⁴ as the outstanding amount forms of the total consideration⁵.

'Outstanding amount' means, in relation to any claim: (1) if at the time of the claim the claimant has received no payment in respect of the amount written off in his accounts, the amount so written off; or (2) if at that time he has received a payment, the amount by which the amount written off exceeds the payment (or the aggregate of the payments)⁶.

1 As to the meaning of 'credit' see PARA 928 note 14.

2 le arising under the Landfill Tax Regulations 1996, SI 1996/1527, Pt VI (regs 22-29) (see PARAS 942-948): see reg 24; and PARA 938 note 1.

3 As to the meaning of 'landfill tax' see PARA 901.

4 'Relevant disposal' means any taxable disposal upon which a claim is based: Landfill Tax Regulations 1996, SI 1996/1527, reg 22. As to the meaning of 'taxable disposal' see PARA 902. As to the meaning of 'claim' see PARA 942 note 5.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 24.

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 22. As to the meaning of 'claimant' see PARA 942 note 5.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/944. Evidence required in support of claim.

944. Evidence required in support of claim.

The claimant¹, before he makes a claim², must hold in respect of each relevant disposal³:

- 162 (1) a copy of the landfill invoice⁴ issued by him⁵;
- 163 (2) records or any other documents showing that he has accounted for and paid landfill tax⁶ on the disposal⁷; and
- 164 (3) records or any other documents showing that the consideration has been written off in his accounts as a bad debt⁸.

1 As to the meaning of 'claimant' see PARA 942 note 5.

2 As to the meaning of 'claim' see PARA 942 note 5.

3 As to the meaning of 'relevant disposal' see PARA 943 note 4.

4 As to the meaning of 'landfill invoice' see PARA 933 note 8.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 25(a).

6 As to the meaning of 'landfill tax' see PARA 901.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 25(b). As to the meaning of 'disposal' see PARA 908 note 5.

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 25(c).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/945. Records required to be kept: the landfill tax bad debt account.

945. Records required to be kept: the landfill tax bad debt account.

Any person who makes a claim¹ must make a record of that claim². Such a record must contain the following information in respect of each claim made:

- 165 (1) in respect of each relevant disposal³:
- 13
- 17. (a) the amount of landfill tax⁴ charged⁵;
- 18. (b) the return⁶ in which that tax was accounted for and when it was paid⁷;
- 19. (c) the date and identifying number of the landfill invoice⁸ that was issued⁹;
- 20. (d) any consideration that has been received (whether before the claim was made or subsequently)¹⁰;
- 21. (e) the details of any transfer note¹¹;
- 14
- 166 (2) the outstanding amount¹²;
- 167 (3) the amount of the claim¹³;
- 168 (4) the return in which the claim was made¹⁴.

Any records made in pursuance of this provision must be kept in a single account known as the 'landfill tax bad debt account'¹⁵.

1 As to the meaning of 'claim' see PARA 942 note 5.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(1).

3 As to the meaning of 'relevant disposal' see PARA 943 note 4.

4 As to the meaning of 'landfill tax' see PARA 901.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(a)(i).

6 As to the meaning of 'return' see PARA 935 note 4.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(a)(ii).

8 As to the meaning of 'landfill invoice' see PARA 933 note 8.

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(a)(iii).

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(a)(iv).

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(a)(v). As to the meaning of 'transfer note' see the Environmental Protection (Duty of Care) Regulations 1991, SI 1991/2839, reg 2 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 645); definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(b).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(c).

14 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(2)(d).

15 Landfill Tax Regulations 1996, SI 1996/1527, reg 26(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/946. Attribution of payments.

946. Attribution of payments.

Where:

- 169 (1) the claimant¹ has carried out a taxable activity² for a customer³;
- 170 (2) there exist one or more other matters in respect of which the claimant is entitled to a debt owed by the customer (whether they involve a taxable disposal⁴ or not and whether they are connected with waste or not); and
- 171 (3) a payment has been received by the claimant from the customer,

the payment must be attributed to the taxable activity and the other matters in accordance with the rule set out below⁵. The debts arising in respect of the taxable activity and the other matters are collectively referred to as debts⁶.

The payment must be attributed to the debt which arose earliest and, if not wholly attributed to that debt, thereafter to debts in the order of the dates on which they arose, except that attribution under this provision may not be made if the payment was allocated to a debt by the customer at the time of payment and the debt was paid in full⁷. Where:

- 172 (a) the earliest debt and the other debts to which the whole of the payment could be attributed arose on the same day; or
- 173 (b) the debts to which the balance of the payment could be attributed in accordance with the above provision arose on the same day,

the payment must be attributed to those debts by multiplying, for each such debt, the payment made by a fraction of which the numerator is the amount remaining unpaid in respect of that debt and the denominator is the amount remaining unpaid in respect of all those debts⁸.

1 As to the meaning of 'claimant' see PARA 942 note 5.

2 As to the meaning of 'taxable activity' see PARA 920 note 1.

3 As to the meaning of 'customer' see PARA 942 note 5.

4 As to the meaning of 'taxable disposal' see PARA 902.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 27(1).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 27(1).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 27(2).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 27(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/947. Repayment of credit.

947. Repayment of credit.

Where a claimant¹:

- 174 (1) has benefited from an amount of credit² to which he was entitled in respect of bad debt³; and
- 175 (2) either (a) a payment for the relevant disposal⁴ is subsequently received; or (b) a payment is treated⁵ as attributed to the relevant disposal,

he must repay to the Commissioners for Her Majesty's Revenue and Customs⁶ such amount as equals the amount of the credit, or the balance thereof, multiplied by a fraction of which the numerator is the amount so received or attributed, and the denominator is the amount of the outstanding consideration⁷.

Where the claimant fails to comply with specified record-keeping and production of documents requirements⁸, he must repay to the Commissioners the amount of the claim⁹ to which the failure to comply relates¹⁰.

1 As to the meaning of 'claimant' see PARA 942 note 5.

2 As to the meaning of 'credit' see PARA 938.

3 I.e. the under Landfill Tax Regulations 1996, SI 1996/1527, Pt VI (regs 22-29): see reg 28(1)(a); and PARA 938 note 1.

4 As to the meaning of 'relevant disposal' see PARA 943 note 4.

5 I.e. by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 27: see PARA 946.

6 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 28(1).

8 The specified requirements are those of the Landfill Tax Regulations 1996, SI 1996/1527, reg 26 (see PARA 945) or, in relation to the documents mentioned in reg 26, either reg 16 (duty to keep records: see PARA 933) or any obligation arising under the Finance Act 1996 s 60, Sch 5 para 3 (see PARA 978): Landfill Tax Regulations 1996, SI 1996/1527, reg 28(2).

9 As to the meaning of 'claim' see PARA 942 note 5.

10 Landfill Tax Regulations 1996, SI 1996/1527, regs 2(1), 28(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(3) CREDIT FOR BAD DEBTS/948. Writing off debts.

948. Writing off debts.

This provision applies for the purpose of determining whether, and to what extent, the consideration is to be taken to have been written off as a bad debt¹. The whole or any part of the consideration for a taxable activity² is to be taken to have been written off as a bad debt where:

- 176 (1) the claimant³ has written it off in his accounts as a bad debt⁴; and
- 177 (2) he has made an entry in relation to that activity in the landfill tax bad debt account⁵ (and this applies regardless of whether a claim⁶ can be made in relation to that activity at that time)⁷.

Where the claimant owes an amount of money to the customer⁸ which can be set off, the consideration written off in the landfill tax bad debt account must be reduced by the amount so owed⁹. Where the claimant holds in relation to the customer an enforceable security¹⁰, the consideration written off in the landfill tax bad debt account must be reduced by the value of the security¹¹.

1 Landfill Tax Regulations 1996, SI 1996/1527, reg 29(1).

2 As to the meaning of 'taxable activity' see PARA 920 note 1.

3 As to the meaning of 'claimant' see PARA 942 note 5.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 29(2)(a). See PARA 945.

5 In accordance with the Landfill Tax Regulations 1996, SI 1996/1527, reg 26 (see PARA 945): see reg 29(2)(b). As to the meaning of 'landfill tax bad debt account' see PARA 945.

6 As to the meaning of 'claim' see PARA 942 note 5.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 29(2)(b).

8 As to the meaning of 'customer' see PARA 942 note 5.

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 29(3).

10 'Security' means in relation to England, Wales and Northern Ireland, any mortgage, charge, lien or other security: Landfill Tax Regulations 1996, SI 1996/1527, reg 22.

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 29(4).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/6. CREDIT FOR TAX/(4) CREDIT FOR PAYMENTS TO BODIES CONCERNED WITH THE ENVIRONMENT: THE LANDFILL TAX COMMUNITIES FUND/949. Qualifying contributions.

(4) CREDIT FOR PAYMENTS TO BODIES CONCERNED WITH THE ENVIRONMENT: THE LANDFILL TAX COMMUNITIES FUND

949. Qualifying contributions.

An entitlement to credit¹ arises² in respect of qualifying contributions made by registered persons³. A payment is a 'qualifying contribution' if:

- 178 (1) it is made by a registered person to an approved body⁴;
- 179 (2) it is made subject to a condition that the body must spend the sum paid or any income⁵ derived from it or both only in the course or furtherance of its approved objects⁶;
- 180 (3) the statutory requirements⁷ have been complied with in relation to that payment⁸; and
- 181 (4) it is not repaid to him, or a contributing third party, in the same accounting period as that in which it was made⁹.

'Contributing third party' means a person who has made or agreed to make (whether or not under a legally binding agreement) a payment to a registered person to secure the making by him of a qualifying contribution or to reimburse him, in whole or in part, for any such contribution he has made¹⁰.

A body is only taken to spend a qualifying contribution in the course or furtherance of its approved objects:

- 182 (a) in a case where the contribution is made subject to a condition that it may only be invested for the purpose of generating income, where the body so spends all of that income¹¹;
- 183 (b) in a case not falling within head (a) above, where the body becomes entitled to income, where it so spends both the whole of the qualifying contribution and all of that income¹²;
- 184 (c) in a case not falling within either of heads (a) and (b) above, where the body so spends the whole of the qualifying contribution¹³; or
- 185 (d) where: (i) it transfers any qualifying contribution or income derived from it to another approved body; and (ii) that transfer is subject to a condition that the sum transferred is to be spent only in the course or furtherance of that other body's approved objects¹⁴.

Where any qualifying contribution or income derived from it is transferred to a body as described in head (d):

- 186 (A) the body to whom the sum is transferred is treated as having received qualifying contributions of the amount concerned¹⁵; and
- 187 (B) that body is treated as having received those qualifying contributions from the registered person or persons who originally paid them (but this does not give rise to any further entitlement to credit in respect of those contributions)¹⁶.

- 1 As to the meaning of 'credit' see PARA 938.
- 2 le under the Landfill Tax Regulations 1996, SI 1996/1527, Pt VII (regs 30-36).
- 3 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(1). As to the meaning of 'registered person' see PARA 922 note 13.
- 4 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(1)(a). As to approved bodies see PARA 952.
- 5 'Income' includes interest: reg 30(1).
- 6 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(1)(b). As to the meaning of 'approved object' see PARA 952.
- 7 le the requirements of the Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2)-(2B): see PARA 955.
- 8 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(1)(c) (amended by SI 1999/3270).
- 9 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(1)(d) (amended by SI 1999/3270).
- 10 Landfill Tax Regulations 1996, SI 1996/1527, reg 30(1) (definition amended by SI 1999/3270).
- 11 Landfill Tax Regulations 1996, SI 1996/1527, reg 30(2)(a).
- 12 Landfill Tax Regulations 1996, SI 1996/1527, reg 30(2)(b).
- 13 Landfill Tax Regulations 1996, SI 1996/1527, reg 30(2)(c).
- 14 Landfill Tax Regulations 1996, SI 1996/1527, reg 30(2)(d).
- 15 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(3)(a) (reg 32(3) substituted by SI 1999/3270).
- 16 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(3)(b) (as substituted: see note 15).

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950. Calculation of amount of credit.

In general, a person is entitled to credit in respect of 90 per cent of the amount of each qualifying contribution¹ made by him in any accounting period². For this purpose, a qualifying contribution made:

- 188 (1) in one accounting period³;
- 189 (2) before the return⁴ for the previous accounting period has been made⁵; and
- 190 (3) before the period within which that return is required to be made has expired⁶,

must be treated as having been made in the accounting period mentioned in head (2) above (and not in the accounting period in which it was in fact made)⁷.

In respect of the qualifying contributions made in each contribution year⁸, a person is not entitled to credit of an amount greater than 6.0 per cent of his relevant tax liability⁹. The relevant tax liability of a person is the aggregate of:

- 191 (a) the landfill tax payable by him, if any, in respect of the accounting period in relation to which that liability falls to be determined; and
- 192 (b) the tax payable by him, if any, in respect of any earlier accounting period or periods which fall within the same contribution year as that accounting period,

and where in respect of any accounting period he is entitled to a payment in respect of credit¹⁰ the aggregate of the tax payable by him in respect of the accounting periods mentioned in heads (a) to (b) above is reduced by the amount of that payment¹¹.

Where one contribution year ends and another begins in an accounting period, the amount of any qualifying contribution which¹² is treated as made in that period must be apportioned between those contribution years¹³. The apportionment must be on the basis of either: (i) the number of days of the accounting period that fall before 1 April and the number of days that fall on and after that day¹⁴; or (ii) the amount of tax charged on taxable disposals made in the accounting period before 1 April and the amount of tax charged on taxable disposals¹⁵ made in that period on and after that day¹⁶, whichever the registered person may choose¹⁷.

1 As to the meaning of 'qualifying contribution' see PARA 949.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2). As to the meaning of 'accounting period' see PARA 928 note 17.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2)(a) (substituted by SI 1999/3270).

4 As to the meaning of 'return' see PARA 935 note 4.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2)(b).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2)(c).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2).

8 For the purposes of the Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2), (3), the contribution year of a person is his first contribution year and then each period of 12 months beginning on 1 April: reg 31(4) (reg 31(4), (5) substituted by SI 2003/605). The reference to the first contribution year of a person is a reference to the period beginning with the effective date of registration and ending on the day immediately preceding the first day of the next contribution year: Landfill Tax Regulations 1996, SI 1996/1527, reg 31(5) (as so substituted).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(3) (amended by SI 2005/759; SI 2006/865; SI 2007/965; SI 2008/770).

10 Ie a payment under the Landfill Tax Regulations 1996, SI 1996/1527, reg 20 (see PARA 940).

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(7) (amended by SI 1999/3270). For the purposes of the Landfill Tax Regulations 1996, SI 1996/1527, reg 31(7), any entitlement to credit is to be disregarded in determining the tax payable by a person in respect of any period: reg 31(10) (amended by SI 1999/3270).

12 Ie by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 31(2).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(6) (substituted by SI 2003/605).

14 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(6A)(a) (reg 31(6A) added by SI 2003/605).

15 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(6A)(b) (as added: see note 14).

16 As to the meaning of 'taxable disposal' see PARA 902.

17 Landfill Tax Regulations 1996, SI 1996/1527, reg 31(6A) (as added: see note 14).

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951. Approved bodies.

A body is eligible to be approved if:

- 193 (1) it is a body corporate, or a trust, partnership or other unincorporated body¹;
- 194 (2) its objects are or include any of the approved objects²;
- 195 (3) it is precluded from distributing and does not distribute any profit it makes or other income it receives³;
- 196 (4) it applies any profit or other income to the furtherance of its objects (whether or not approved objects)⁴;
- 197 (5) it is precluded from applying any of its funds for the benefit of any of the persons: (a) who have made qualifying contributions⁵ to it; or (b) who were a contributing third party⁶ in relation to such contributions, except that such persons may benefit where they belong to a class of persons that benefits generally⁷;
- 198 (6) it is not controlled⁸ by one or more of certain persons and bodies⁹;
- 199 (7) none of certain persons or bodies¹⁰ is concerned in its management¹¹; and
- 200 (8) it pays to the regulatory body¹² an application fee¹³.

Any approval, or revocation of such approval, by the Commissioners for Her Majesty's Revenue and Customs or the regulatory body must be given by notice in writing to the body affected and takes effect from the date the notice is given or such later date as the Commissioners or, as the case may be, the regulatory body may specify in it¹⁴.

1 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(a) (amended by SI 1999/3270).

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(b). As to the approved objects see PARA 952.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(c). 'Income' includes interest: reg 30(1).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(d).

5 As to qualifying contributions see PARA 949.

6 As to the meaning of 'contributing third party' see PARA 949.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(e) (substituted by SI 1999/3270).

8 For these purposes, a body or person (in either case, 'the person') is taken to control a body where:

66 (1) in the case of a body which is a body corporate, the person is empowered by statute to control that body's activities or if he is that body's holding company within the meaning of the Companies Act 2006 s 1159, Sch 6 (see **COMPANIES** vol 14 (2009) PARA 25); and an individual is taken to control a body corporate if he, were he a company, would be that body's holding company within the meaning of that Act (Landfill Tax Regulations 1996, SI 1996/1527, reg 33(9) (a) (amended by SI 1999/3270; and SI 2009/1890));

67 (2) in the case of a body which is a trust or a partnership, where: (a) the person, taken together with any nominee of his; or (b) any nominee of the person, taken together with any nominee of that nominee or any other nominee of the person, forms a majority of the total number of trustees or partners, as the case may be (Landfill Tax Regulations 1996, SI 1996/1527, reg 33(9)(b));

- 68 (3) in the case of any other body, where the person, whether directly or through any nominee, has the power to appoint or remove any officer of the body, to determine the objects of the body, or to determine how any of the body's funds may be applied (reg 33(9)(c)).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(f) (substituted by SI 1999/3270). These persons and bodies are specified in the Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1A), (1B) (added by SI 1999/3270).

The persons and bodies specified in the Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1A) are: (1) a local authority; (2) a body corporate controlled by one or more local authorities; (3) a registered person; (4) a person connected with any of the persons or bodies mentioned in heads (1)-(3).

The persons and bodies specified in reg 33(1B) are: (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under reg 34(1)(ee) (see PARA 954); (b) a person who has been convicted of an indictable offence; (c) a person who is disqualified for being a charity trustee or a trustee for a charity by virtue of the Charities Act 1993 s 72 (see **CHARITIES** vol 8 (2010) PARA 273); (d) a person connected with any of the persons or bodies mentioned in heads (a)-(c); (e) a person who is incapable by reason of mental disorder. For the purposes of head (e), a person is treated as incapable by reason of mental disorder where, in England and Wales, the person lacks capacity within the meaning of the Mental Capacity Act 2005 to administer and manage his property and affairs (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641 et seq), (or in Northern Ireland, the court has exercised any of its powers under the Mental Health (Northern Ireland) Order 1986, SI 1986/595 (NI 4), Pt VIII (arts 97-109)), but ceases to be so treated where the judge has made a finding that he is not or is no longer incapable of managing and administering his property and affairs: Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1C) (added by SI 1999/3270; and amended by SI 2007/1898).

10 le the persons and bodies listed in note 9 heads (a)-(e).

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(g) (added by SI 1999/3270).

12 'Regulatory body' means such body, if any, as in relation to which an approval of the Commissioners for Her Majesty's Revenue and Customs under the Landfill Tax Regulations 1996, SI 1996/1527, reg 35 (see PARA 954) has effect for the time being: reg 30(1). As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(h) (added by SI 1999/3270). The application fee is to be £100 or such lesser sum as the regulatory body may require: Landfill Tax Regulations 1996, SI 1996/1527, reg 33(1)(h) (as so added).

14 Landfill Tax Regulations 1996, SI 1996/1527, reg 30(3).

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952. Approved objects.

The objects of a body are approved objects in so far as they are any of the following objects¹:

- 201 (1) in relation to any land the use of which for any economic, social or environmental purpose has been prevented or restricted because of the carrying on of an activity on the land which has ceased: (a) reclamation, remediation or restoration; or (b) any other operation intended to facilitate economic, social or environmental use²;
- 202 (2) in relation to any land the condition of which, by reason of the carrying on of an activity on the land which has ceased, is such that pollution (whether of that land or not) is being or may be caused: (a) any operation intended to prevent or reduce any potential for pollution; or (b) any operation intended to remedy or mitigate the effects of any pollution that has been caused³;
- 203 (3) where it is for the protection of the environment, the provision, maintenance or improvement of: (a) a public park; or (b) another public amenity, in the vicinity of a landfill site, provided certain conditions are satisfied⁴;
- 204 (4) where it is for the protection of the environment and⁵ the conservation or promotion of biological diversity⁶ through: (a) the provision, conservation, restoration or enhancement of a natural habitat; or (b) the maintenance or recovery of a species in its natural habitat, on land or in water situated in the vicinity of a landfill site⁷;
- 205 (5) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure which: (a) is a place of religious worship or of historic or architectural interest; (b) is open to the public; and (c) is situated in the vicinity of a landfill site, provided certain conditions are satisfied⁸;
- 206 (6) the provision of financial, administration and other similar services to bodies which are within these provisions and only such bodies⁹.

Where the objects of a body are or include any of the objects set out above, the following must also be regarded as approved objects:

- 207 (i) the use of qualifying contributions¹⁰ in paying the running costs of the body¹¹;
- 208 (ii) the use of qualifying contributions in paying a contribution to the running costs of the regulatory body¹².

1 See the Landfill Tax Regulations 1996, SI 1996/1527, regs 30(1), 33; and the text to notes 2-12.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(a). An object is not, or is no longer, regarded as falling within reg 33(2)(a) or reg 33(2)(b) if the reclamation, remediation, restoration or other operation: (1) is such that any benefit from it will accrue to any person who has carried out or knowingly permitted the activity which has ceased; (2) involves works which are required to be carried out by certain statutory notices or orders; or (3) is wholly or partly required to be carried out by a relevant condition: reg 33(3).

The notices and orders referred to are: (a) a works notice served under the Control of Pollution Act 1974 s 46A (repealed); (b) an enforcement notice served under the Environmental Protection Act 1990 s 13 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 174); (c) a prohibition notice served under s 14 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 175); (d) an order under s 26 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 184); (e) a remediation notice served under s 78E (as added and amended) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 766); (f) an

enforcement notice served under the Water Resources Act 1991 s 90B (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 310); (g) a works notice served under the Water Resources Act 1991 s 161A (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 321 et seq); (h) an enforcement notice served under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36; (i) a suspension notice served under reg 37; (j) an order under reg 44; (k) an enforcement notice under the Pollution Prevention and Control Regulations (Northern Ireland) 2003, SR 2003/46, reg 24; (l) a suspension notice served under reg 25; (m) an order under reg 36: see the Landfill Tax Regulations 1996, SI 1996/1527, reg 33(4) (heads (h)-(j) added by SI 2000/1973; substituted by SI 2007/3538; heads (k)-(m) added by the Pollution Prevention and Control Regulations (Northern Ireland) 2003, SR 2003/46, reg 41, Sch 11 para 6). As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I (ss 1-28) see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 159.

For the purposes of the Landfill Tax Regulations 1996, SI 1996/1527, reg 33(3), reg 33(3A) (see note 7), and reg 33(6) (see notes 4, 8), a condition is relevant if it is a condition of any planning permission or other statutory consent or approval granted on the application of any person making a qualifying contribution to the body, or a term of an agreement made under the Town and Country Planning Act 1990 s 106 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 244 et seq) or the Planning (Northern Ireland) Order 1991, SI 1991/1220 (NI 11), art 40 to which such a person is a party: Landfill Tax Regulations 1996, SI 1996/1527, reg 33(10) (amended by SI 1999/3270; SI 2003/2313).

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(b).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(d). The conditions are that: (1) the provision of the park or amenity is not required by a relevant condition (see note 2); and (2) the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit: reg 33(6)(a), (b). See also note 2.

5 Is subject to the Landfill Tax Regulations 1996, SI 1996/1527, reg 3(3A): see note 7.

6 For these purposes, 'biological diversity' has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity of 1992: Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2A) (added by SI 2003/2313).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(da) (added by SI 2003/2313). However, an object is not, or is no longer, regarded as falling within the Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(da) if it involves works which: (1) are required to be carried out by a notice or order within reg 33(4) (see note 2); (2) are required to be carried out in accordance with an agreement made under the National Parks and Access to the Countryside Act 1949 s 16 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 664, 671); (3) are required to be carried out in accordance with an agreement made under the Countryside Act 1968 s 15 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 687); (4) give effect to any provision of a management scheme under the Wildlife and Countryside Act 1981 s 28J or are required to be carried out by a notice served under s 28K (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 686, 688); (5) are wholly or partly required to be carried out by a relevant condition; or (6) are carried out with a view to profit: Landfill Tax Regulations 1996, SI 1996/1527, reg 33(3A) (added by SI 2003/2313). See also note 2.

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(e). The conditions are that the park, amenity, building or structure (as the case may be) is not to be operated with a view to profit: reg 33(6)(b). See also note 2.

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(2)(f).

10 As to the meaning of 'qualifying contribution' see PARA 949.

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(7)(a). The use of qualifying contributions in paying the running costs of the body must only be regarded as an approved object if the body determines so to use no more than such proportion of the total of qualifying contributions, together with any income derived from them (or, in the case of a contribution within reg 30(2)(a) (see PARA 949), only that income) as the proportion of that total forms of the total funds at its disposal and does not in fact use a greater amount: reg 33(8). 'Running costs' includes any cost incurred in connection with the management and administration of a body or its assets: reg 30(1).

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 33(7)(b) (amended by SI 1999/3270).

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953. Obligations of approved bodies.

An approved body¹ must:

- 209 (1) continue to meet all the statutory requirements as to eligibility²;
- 210 (2) comply with such conditions as the regulatory body³ may impose from time to time, including any conditions varied by the regulatory body⁴;
- 211 (3) apply qualifying contributions⁵ and any income⁶ derived there from only to approved objects⁷;
- 212 (4) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were contributing third parties⁸ in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally)⁹;
- 213 (5) make and retain records of the following:
 - 15 22. (a) the name, address and registration number of each registered person¹⁰ making a qualifying contribution to the body¹¹;
 23. (b) the name and address of any contributing third party in relation to a qualifying contribution received by the body¹²;
 24. (c) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived from it¹³;
 25. (d) in the case of a transfer of the whole or part of any qualifying contribution or income derived from it to or from the body, the date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address of any contributing third party in relation to the qualifying contribution¹⁴;
 26. (e) in respect of each qualifying contribution and any income derived from it, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure¹⁵;
- 16 214 (6) provide the following information to the regulatory body or, if they are performing the functions of the regulatory body, to the Commissioners for Her Majesty's Revenue and Customs¹⁶ within seven days of the receipt by it of any qualifying contribution:
 - 17 27. (a) the amount of the contribution¹⁷;
 28. (b) the date it was received¹⁸;
 29. (c) the name and registration number of the person making the contribution¹⁹;
 30. (d) the name and address of any contributing third party in relation to the contribution notified²⁰ to it²¹;
- 18 215 (7) notify the regulatory body within seven days of any transfer by it of qualifying contributions or of income derived therefrom of:
 - 19 31. (a) the date of the transfer²²;
 32. (b) the enrolment number of the approved body by which the transfer was made²³;

33. (c) the amount transferred²⁴;
 34. (d) the name and registration number of the person who made the qualifying contribution²⁵;
 35. (e) the name and address of any contributing third party in relation to the contribution²⁶; and
 36. (f) the approved objects to which the transferred funds are to be applied²⁷;
- 20
- 216 (8) provide the regulatory body or, if they are performing the functions of the regulatory body, the Commissioners with information from or access to the records referred to in head (5) above within 14 days (or such longer period as the regulatory body or, as the case may require, the Commissioners may allow) of a request being made for such information or access²⁸;
 - 217 (9) submit to the regulatory body or, if they are performing the functions of the regulatory body, to the Commissioners within 28 days of the end of the relevant period²⁹ details of:
- 21
37. (a) qualifying contributions and any other income or profit whatsoever received by it³⁰;
 38. (b) any expenditure made by it during the period³¹; and
 39. (c) any balances held by it at the end of the period³²;
- 22
- 218 (10) submit to the regulatory body at its request, not later than 28 days after the request, so many of the following details as it requires at any time during the relevant period:
- 23
40. (a) qualifying contributions and any other income or profit whatsoever received by it during the period³³;
 41. (b) any expenditure made by it during the period³⁴; and
 42. (c) any balances held during the period³⁵;
- 24
- 219 (11) if the Commissioners are performing the functions of the regulatory body, submit, at their request, not later than 28 days after the request, so many of the following details as they may require at any time during the relevant period:
- 25
43. (a) qualifying contributions and any other income or profit whatsoever received by it during the period³⁶;
 44. (b) any expenditure made by it during the period³⁷; and
 45. (c) any balances held during the period³⁸;
- 26
- 220 (12) submit to the regulatory body at its request, not later than the fourteenth day following the day on which the request is made, independently audited financial accounts for the approved body's last financial year³⁹; and
 - 221 (13) pay to the regulatory body an amount equal to 5 per cent of each qualifying contribution it receives, or such lesser amount as the regulatory body may require, towards its running costs within 14 days of receipt of a demand for payment⁴⁰.

1 As to approved bodies see PARA 951.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(a) (reg 33A added by SI 1999/3270). As to the statutory requirements see PARA 952.

3 As to the regulatory body see PARA 954.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(aa) (reg 33A(1)(aa), (ha), (hb), (3), (4) added by SI 2007/965). As to the imposition and variation of conditions by the regulatory body see PARA 954.

- 5 As to the meaning of 'qualifying contribution' see PARA 949.
- 6 As to the meaning of 'income' see PARA 951 note 3. See also *Re Groundwork Community Forests North East Developments Limited* [2009] EWHC 2173 (Ch), [2010] STC 37 (sale proceeds of landfill site not income derived from qualifying contributions).
- 7 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(b) (as added: see note 2). As to approved objects see PARA 952.
- 8 As to the meaning of 'contributing third party' see PARA 949.
- 9 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(c) (as added: see note 2).
- 10 As to the meaning of 'registered person' see PARA 922 note 13.
- 11 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(d)(i) (as added: see note 2).
- 12 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(d)(ii) (as added: see note 2).
- 13 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(d)(iii) (as added: see note 2).
- 14 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(d)(iv) (as added: see note 2).
- 15 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(d)(v) (as added: see note 2).
- 16 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 17 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(e)(i) (as added: see note 2).
- 18 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(e)(ii) (as added: see note 2).
- 19 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(e)(iii) (as added: see note 2).
- 20 Ie by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2B): see PARA 955.
- 21 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(e)(iv) (as added: see note 2).
- 22 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(f)(i) (as added (see note 2); reg 33A(1)(f) amended by SI 2007/965).
- 23 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(f)(ii) (as added (see note 2); and amended (see note 2)).
- 24 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(f)(iii) (as added: see note 2).
- 25 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(f)(iv) (as added: see note 2).
- 26 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(f)(v) (as added: see note 2).
- 27 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(f)(vi) (as added: see note 2).
- 28 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(g) (as added (see note 2); and amended by SI 2002/1).
- 29 The relevant period in respect of an approved body is, in the case of the first such period, the period commencing with the date on which the body was approved and ending on the following 31 March: Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(2)(a) (as added (see note 2); and substituted by SI 2007/965). In the case of subsequent periods, the relevant period in respect of an approved body is the period of 12 months commencing with the day after the end of the first or, as the case may require, a subsequent period: Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(2)(b) (as so added and substituted).
- 30 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(h)(i) (as added (see note 2); and amended by SI 2008/770). Where an approved body submits details in accordance with a request made under the Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(ha) or (hb) (as added: see note 4) (see heads (10), (11) in the text), the requirement in reg 33A(1)(h) does not apply in respect of those details: reg 33A(4) (as so added).
- 31 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(h)(ii) (as added: see note 2).

- 32 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(h)(iii) (as added: see note 2).
- 33 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(ha)(i) (as added: see note 4).
- 34 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(ha)(ii) (as added: see note 4).
- 35 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(ha)(iii) (as added: see note 4).
- 36 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(hb)(i) (as added: see note 4).
- 37 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(hb)(ii) (as added: see note 4).
- 38 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(hb)(iii) (as added: see note 4).
- 39 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(i) (as added (see note 2); substituted by SI 2007/965; and amended by SI 2008/770). A request may not be made earlier than ten months following the end of the financial year concerned: Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(i) (as so added, substituted and amended).
- 40 Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1)(j) (as added: see note 2).

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954. The regulatory body.

The Commissioners for Her Majesty's Revenue and Customs¹ may approve a body to carry out the functions of the regulatory body² and may revoke the approval³. Without prejudice to the generality of this provision, the Commissioners may revoke their approval of the regulatory body where it appears to them necessary to do so for the proper operation of the credit scheme established by the regulations⁴.

At the time the body is approved, or subsequently by notice delivered to that body, the Commissioners may impose such conditions as they see fit⁵ and may, by such notice, vary or revoke any such condition⁶. The Commissioners may not approve a body without first revoking the approval for any other body with effect from a time earlier than that for which the new approval is to take effect⁷.

Where:

- 222 (1) the Commissioners revoke their approval of the regulatory body without approving another body with effect from the day after the revocation takes effect; and
- 223 (2) they have not given notice in writing to each body which has been enrolled (and which has not been removed from the roll), no later than the date such revocation takes effect, that they will be performing any of the functions of regulatory bodies,

the approval of all such bodies is deemed to have been revoked on the day the Commissioners revoked their approval⁸.

The regulatory body:

- 224 (a) must, on application being made to it by a body which is eligible to be approved⁹, approve that body¹⁰;
- 225 (b) may, at the time a body is approved, or subsequently by notice delivered to that body, impose such conditions as it sees fit¹¹;
- 226 (c) may, by notice delivered to a body, vary or revoke any condition of the approval¹²;
- 227 (d) must revoke the approval of any body which applies for its approval to be revoked¹³;
- 228 (e) must maintain a roll of bodies which it has approved¹⁴;
- 229 (f) must allocate an identifying number (the enrolment number) to each such body¹⁵;
- 230 (g) must remove from the roll any body whose approval has been revoked¹⁶;
- 231 (h) must satisfy itself, by reference to such records or other documents or information it thinks fit, that the qualifying contributions¹⁷ received by the body have been spent by it only in the course or furtherance of its approved objects¹⁸;
- 232 (i) must publish information regarding which bodies it has approved and which approvals have been revoked¹⁹;
- 233 (j) must, when notified by an approved body of the transfer to or by it of the whole or part of a qualifying contribution or of income derived from it, notify the

registered person who made the qualifying contribution, and any contributing third party²⁰ in relation to it, of:

27

- 46. (i) the date of the transfer²¹;
- 47. (ii) the name and enrolment number of the body by or, as the case may require, to whom the transfer was made²²;
- 48. (iii) the amount transferred²³; and
- 49. (iv) the approved objects to which the transferred funds are to be applied²⁴; and

28

- 234 (k) must comply with such conditions as the Commissioners may impose from time to time, including any conditions which have been varied²⁵.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(a) (substituted by SI 1999/3270). The approved body is ENTRUST. For any time as regards which no approval has effect, the Commissioners may perform any of the functions of the regulatory body: Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(e). The Commissioners may disclose to the regulatory body information which relates to the tax affairs of registered persons and which is relevant to the credit scheme established by the regulations: reg 35(1)(f) (amended by SI 1999/3270). Having regard to any information received from the regulatory body, the Commissioners may serve repayment of credit notices (see PARA 956): Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(g) (amended by SI 1999/3270; SI 2008/770).

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(c).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 35(2) (substituted by SI 1999/3270).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(aa) (added by SI 2007/965).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(ab) (added by SI 2007/965).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(d).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(2) (amended by SI 1999/3270).

9 le under the Landfill Tax Regulations 1996, SI 1996/1527, reg 33: see PARA 951.

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(a) (substituted by SI 1999/3270). The Commissioners may revoke the approval if the approved body fails to comply with any of the relevant requirements: Landfill Tax Regulations 1996, SI 1996/1527, reg 35(1)(h) (added by SI 2008/770). The requirements referred to are those of the Landfill Tax Regulations 1996, SI 1996/1527, reg 33A(1): see PARA 953.

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(aa) (added by SI 2007/965).

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(ab) (added by SI 2007/965).

13 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(ee) (added by SI 1999/3270).

14 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(f).

15 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(g).

16 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(h) (amended by SI 2008/770). As to the revocation of approval see head (d) in the text and note 10.

17 As to the meaning of 'qualifying contribution' see PARA 949.

18 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(i).

19 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(j) (amended by SI 2008/770). As to the revocation of approval see head (d) in the text and note 10.

- 20 As to the meaning of 'contributing third party' see PARA 949.
- 21 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(k)(i) (reg 34(1)(k) added by SI 1999/3270).
- 22 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(k)(ii) (as added: see note 21).
- 23 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(k)(iii) (as added: see note 21).
- 24 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(k)(iv) (as added: see note 21).
- 25 Landfill Tax Regulations 1996, SI 1996/1527, reg 34(1)(l) (added by SI 2007/965).

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955. Records and information.

A person claiming credit in respect of contributions to bodies concerned with the environment¹ must make a record containing the following information:

- 235 (1) the amount and date of each payment he has made to an approved body²;
- 236 (2) the name and enrolment number of that body³;
- 237 (3) the name and address of any contributing third party⁴;
- 238 (4) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount: (a) was received; or (b) is expected to be received⁵.

A person claiming credit for a contribution in relation to which there is a contributing third party must have provided to the regulatory body⁶ or, if they are performing the functions of a regulatory body, to the Commissioners for Her Majesty's Revenue and Customs the following information:

- 239 (i) the name and address of the contributing third party⁷;
- 240 (ii) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount: (A) was received; or (B) is expected to be received⁸;
- 241 (iii) the enrolment number of the approved body to whom the contribution was made⁹.

A person claiming credit for a contribution in relation to which there is a contributing third party must have informed the approved body to which the contribution is made of the name and address of the contributing third party¹⁰.

1 The credit arising under the Landfill Tax Regulations 1996, SI 1996/1527, Pt VII (regs 30-36): see PARA 949 et seq.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2)(a). As to approved bodies see PARA 952.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2)(b).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2)(c) (added by SI 1999/3270). As to the meaning of 'contributing third party' see PARA 949.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2)(d) (added by SI 1999/3270).

6 As to the regulatory body see PARA 954.

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2A)(a) (reg 32(2A) added by SI 1999/3270).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2A)(b) (as added: see note 7).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2A)(c) (as added: see note 7).

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 32(2B) (added by SI 1999/3270).

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956. Repayment of credit.

Where a person has benefited from an amount of credit to which he was entitled in respect of contributions to bodies concerned with the environment¹, and the Commissioners for Her Majesty's Revenue and Customs² serve upon him a notice in relation to a qualifying contribution³ paid to an approved body⁴ specifying: (1) that they are not satisfied that the contribution has been spent by the body only in the course or furtherance of its approved objects⁵ or that they are not satisfied that any income⁶ derived from the contribution has been so spent by the body; (2) a breach of a condition to which the approval of the body was made subject and which occurred before the contribution was spent by the body; or (3) that the approval of the body has been revoked and that the contribution had not been spent by the body before that revocation took effect, he must repay to the Commissioners the credit claimed in respect of the qualifying contribution⁷.

Where a person has benefited from an amount of credit to which he was entitled, and the whole or a part of the qualifying contribution in respect of which the entitlement to credit arose has been repaid to him or to a person who was a contributing third party⁸ in relation to the qualifying contribution, he must pay to the Commissioners an amount equal to 90 per cent of the amount repaid to him⁹.

Where a person has benefited from an amount of credit to which he was entitled, and he is entitled to a payment¹⁰ in respect of a later accounting period in the same contribution year as the accounting period in respect of which that credit was claimed, the person must pay to the Commissioners an amount equal to the difference between:

- 242 (a) the aggregate of the amount of the credit from which he has benefited, and any other amounts of credit arising which he is or was entitled to claim, in respect of that contribution year¹¹; and
- 243 (b) the amount of credit which he would have been entitled to claim if he had in fact claimed the aggregate amount mentioned in head (a) above in the return for the accounting period in respect of which he was entitled to the payment¹².

Where a person has benefited from an amount of credit to which he was entitled, and he acquires an asset¹³ from a body to which he has made a qualifying contribution for no consideration, or a consideration which is less than the open market value of the asset¹⁴, he must pay to the Commissioners an amount equal to 90 per cent of the amount by which the open market value exceeds the consideration¹⁵. A person required to pay such an amount is not required to pay more than the total amount of relevant credit¹⁶, but is not entitled to claim any further amounts of credit in respect of qualifying contributions made by him to the body in question on or after the date on which he acquired the asset¹⁷.

1 Ie credit arising under the Landfill Tax Regulations 1996, SI 1996/1527, Pt VII (regs 30-36): see PARA 949.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 As to the meaning of 'qualifying contribution' see PARA 949.

4 As to approved bodies see PARA 951.

- 5 As to approved objects see PARA 952.
- 6 As to the meaning of 'income' see PARA 951 note 3.
- 7 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(1). For the purpose of reg 36(1), where: (1) repayment is required in relation to credit that has been claimed in respect of more than one qualifying contribution in an accounting period; and (2) the provisions of reg 31(3) (see PARA 950) applied so that the amount of credit was restricted, the person is deemed to have claimed credit in respect of such proportion of each contribution made in that accounting period as the total credit claimed forms of the total of the contributions made: reg 36(2). As to the meaning of 'accounting period' see PARA 928 note 17.
- 8 As to the meaning of 'contributing third party' see PARA 949.
- 9 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(3) (substituted by SI 1999/3270).
- 10 le by the Commissioners under the Landfill Tax Regulations 1996, SI 1996/1527, reg 20: see PARA 940.
- 11 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(4), (5)(a).
- 12 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(4), (5)(b).
- 13 'Asset' includes land, goods or services and any interest in any of these: Landfill Tax Regulations 1996, SI 1996/1527, reg 36(8)(a).
- 14 The open market value of an asset is the amount of the consideration in money that would be payable for the asset by a person standing in no such relationship with any person as would affect that consideration: Landfill Tax Regulations 1996, SI 1996/1527, reg 36(8)(b).
- 15 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(6).
- 16 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(7)(a). 'Relevant credit' means credit arising under Pt VII from which a person has benefited, and which has arisen in respect of qualifying contributions made by him to the body in question or treated by virtue of reg 32(3) (see PARA 949 note 15) as having been received by that body from him: reg 36(8)(c).
- 17 Landfill Tax Regulations 1996, SI 1996/1527, reg 36(7)(b).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(1) RECOVERY/957. Power to recover tax.

7. RECOVERY OF TAX DUE

(1) RECOVERY

957. Power to recover tax.

Landfill tax¹ due from any person is recoverable as a debt due to the Crown².

1 As to the meaning of 'landfill tax' see PARA 901.

2 Finance Act 1996 s 60, Sch 5 para 11.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(1) RECOVERY/958. Amounts shown as tax on invoices.

958. Amounts shown as tax on invoices.

Where (1) a registrable person¹ issues an invoice² showing an amount as landfill tax³ chargeable on an event; and (2) no tax is in fact chargeable on the event, an amount equal to the amount shown as tax is recoverable from the person as a debt due to the Crown⁴.

Where (a) a registrable person issues an invoice showing an amount as tax chargeable on a taxable disposal⁵; and (b) the amount shown as tax exceeds the amount of tax in fact chargeable on the disposal, an amount equal to the excess is recoverable from the person as a debt due to the Crown⁶.

1 References in the Finance Act 1996 Pt III (ss 39-71) to a 'registrable person' are references to a person who: (1) is registered under s 47 (see PARA 920); or (2) is liable to be so registered: s 47(10).

2 References to an invoice are references to any invoice, whether or not it is a landfill invoice within the meaning of the Finance Act 1996 s 61 (see PARA 904): s 60, Sch 5 para 44(3).

3 As to the meaning of 'landfill tax' see PARA 901.

4 Finance Act 1996 Sch 5 para 44(1).

5 As to the meaning of 'taxable disposal' see PARA 902.

6 Finance Act 1996 Sch 5 para 44(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(2) ASSESSMENTS/959. Power to assess.

(2) ASSESSMENTS

959. Power to assess.

Where:

- 244 (1) a person has failed to make any returns required to be made under the landfill tax provisions¹;
- 245 (2) a person has failed to keep any documents necessary to verify returns required to be made under those provisions²;
- 246 (3) a person has failed to afford the facilities necessary to verify returns³; or
- 247 (4) it appears to the Commissioners for Her Majesty's Revenue and Customs⁴ that returns required to be made by a person are incomplete or incorrect⁵,

the Commissioners may assess the amount of landfill tax due from the person concerned to the best of their judgment and notify it to him⁶. Where a person has for an accounting period⁷ been paid an amount to which he purports to be entitled under the regulations as to tax credits⁸, then, to the extent that the amount ought not to have been paid or would not have been paid had the facts been known or been as they later turn out to be, the Commissioners may assess the amount as being tax due from him for that period and notify it to him accordingly⁹. Where a person is so assessed in respect of the same accounting period the assessments may be combined and notified to him as one assessment¹⁰.

Where:

- 248 (a) as a result of a person's failure to make a return in relation to an accounting period the Commissioners have made an assessment¹¹ for that period¹²;
- 249 (b) the tax assessed has been paid but no proper return has been made in relation to the period to which the assessment related¹³; and
- 250 (c) as a result of a failure to make a return in relation to a later accounting period, being a failure by the person referred to in head (a) above or a person acting in a representative capacity in relation to him¹⁴, the Commissioners find it necessary to make another assessment¹⁵,

then, if the Commissioners think fit, having regard to the failure referred to in head (a) above, they may specify in the assessment referred to in head (c) above an amount of tax greater than that which they would otherwise have considered to be appropriate¹⁶.

Where an amount has been assessed and notified to any person¹⁷, it is deemed to be an amount of tax due from him and may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced¹⁸.

1 Finance Act 1996 s 50(1)(a). The provisions referred to in the text are those of Pt III (ss 39-71): see PARA 901 note 1.

2 Finance Act 1996 s 50(1)(b).

3 Finance Act 1996 s 50(1)(c).

4 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

5 Finance Act 1996 s 50(1)(d).

6 Finance Act 1996 s 50(1). Where the person failing to make a return, or making a return which appears to the Commissioners to be incomplete or incorrect, was required to make the return as a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, s 50(1) applies as if the reference to tax due from him included a reference to tax due from that other person: s 50(4). For the purposes of s 50, notification to: (1) a personal representative, trustee in bankruptcy, receiver or liquidator; or (2) a person otherwise acting in a representative capacity in relation to another person, is treated as notification to the person acted for: s 50(8). As to the Commissioners' discretion in making an assessment see *Easter Hatton Environmental (Waste Away) Ltd* L00026.

7 As to the meaning of 'accounting period' see PARA 928 note 17.

8 I.e regulations made under the Finance Act 1996 s 51: see PARA 938 et seq.

9 Finance Act 1996 s 50(2).

10 Finance Act 1996 s 50(3).

11 I.e under the Finance Act 1996 s 50(1): see the text and notes 1-6.

12 Finance Act 1996 s 50(6)(a).

13 Finance Act 1996 s 50(6)(b).

14 I.e as mentioned in the Finance Act 1996 s 50(4): see note 6.

15 Finance Act 1996 s 50(6)(c). The reference is to an assessment under s 50(1): see the text and notes 1-6.

16 Finance Act 1996 s 50(6).

17 I.e under the Finance Act 1996 s 50(1) or s 50(2): see the text and notes 1-9.

18 Finance Act 1996 s 50(7).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(2) ASSESSMENTS/960. Time limits for assessments.

960. Time limits for assessments.

An assessment of an amount of tax due for an accounting period may not be made after the later of the following:

- 251 (1) two years after the end of the accounting period¹;
- 252 (2) one year after evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, comes to their knowledge².

However, where further such evidence comes to their knowledge after the making of such an assessment, another assessment may be made in addition to any earlier assessment³.

In general, an assessment of the amount of landfill tax due from any person⁴ may not be made more than three years after the end of the accounting period⁵ concerned⁶.

Where after a person's death the Commissioners for Her Majesty's Revenue and Customs⁷ propose to assess an amount as due by reason of some conduct⁸ of the deceased, the assessment must not be made more than three years after the death⁹.

1 Finance Act 1996 s 50(5)(a).

2 Finance Act 1996 s 50(5)(b).

3 Finance Act 1996 s 50(5). Section 50(5) has effect subject to s 60, Sch 5 para 33(1)(a) (time limits) (see the text to note 3): s 50(9).

4 I.e. an assessment under any provision of the Finance Act 1996 s 50: see PARA 959 and the text to notes (1)-(3). As to assessments of amounts due by way of penalty or interest see PARA 994.

5 As to the meaning of 'accounting period' see PARA 928 note 17.

6 Finance Act 1996 s 60, Sch 5 para 33(1)(a) (Sch 5 para 33(1), (4) amended by the Finance Act 1997 s 50(1), Sch 5 Pt II para 6(2)(c)). Subject to the Finance Act 1996 Sch 5 para 33(5) (assessment after death: see the text to notes 7-9), if tax has been lost: (1) as a result of conduct falling within Sch 5 para 18(1) (dishonest evasion: see PARA 987) or for which a person has been convicted of fraud; or (2) in circumstances giving rise to liability to a penalty under Sch 5 para 21 (failure to register: see PARA 920 note 4), an assessment may be made as if, in Sch 5 para 33(1), each reference to three years were a reference to 20 years: Sch 5 para 33(4) (as so amended).

As from 1 April 2010, Sch 5 para 33(1) is to be amended by, and Sch 5 para 33(1A) added by, the Finance Act 2009 s 99, Sch 51 para 40(2), (3) so that an assessment may not in general be made more than four years after the end of the accounting period concerned. As from 1 April 2010, Sch 5 para 33(4) is to be substituted by, and Sch 5 para 33(4A) added by, the Finance Act 2009 Sch 51 para 40(5) so that an assessment of an amount due from a person in a case involving a loss of tax brought about deliberately by that person (or by another person acting on his behalf) or attributable to a failure by the person to comply with an obligation under the Finance Act 1996 s 47(2), (3) (registration: see PARA 920) may be made at any time not more than 20 years after the end of the accounting period concerned. The reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person: Sch 5 para 33(4A) (as so added).

7 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

8 As to the meaning of 'conduct' see PARA 987 note 3.

9 Finance Act 1996 Sch 5 para 33(5)(a). If the circumstances are as set out in Sch 5 para 33(4) (see note 3), the modification of Sch 5 para 33(1) contained in Sch 5 para 33(4) (see note 6) does not apply but any

assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within three years after it: Sch 5 para 33(5)(b).

As from 1 April 2010 Sch 5 para 33(5) is to be amended by the Finance Act 2009 Sch 51 para 40(6) so that an assessment must not be made more than four years after the death, and the Finance Act 1996 Sch 5 para 33(5)(b) is repealed.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(2) ASSESSMENTS/961. Supplementary assessments.

961. Supplementary assessments.

If, otherwise than in certain circumstances¹, it appears to the Commissioners for Her Majesty's Revenue and Customs² that the amount which ought to have been assessed in an assessment³ exceeds the amount which was so assessed, then:

- 253 (1) under the like provision as that assessment was made; and
- 254 (2) on or before the last day on which that assessment could have been made,

the Commissioners may make a supplementary assessment of the amount of the excess and must notify the person concerned accordingly⁴.

1 Ie circumstances falling within the Finance Act 1996 s 50(5)(b): see PARA 960.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 Ie under any provision of the Finance Act 1996 s 50 (see PARA 959) or under s 60, Sch 5 para 32 (see PARA 994).

4 Finance Act 1996 Sch 5 para 34.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(3) SET-OFF/962. Power to make regulations as to set-off.

(3) SET-OFF

962. Power to make regulations as to set-off.

Regulations may make provision in relation to any case where:

- 255 (1) a person is under a duty to pay to the Commissioners for Her Majesty's Revenue and Customs¹ at any time an amount or amounts in respect of landfill tax²; and
- 256 (2) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any tax³ (or taxes) under their care and management⁴.

The regulations may provide that if the total of the amount or amounts mentioned in head (1) above exceeds the total of the amount or amounts mentioned in head (2) above, the latter must be set off against the former⁵; and, conversely, that if the total of the amount or amounts mentioned in head (2) above exceeds the total of the amount or amounts mentioned in head (1) above, the Commissioners may set off the latter in paying the former⁶. If the total of the amount or amounts mentioned in head (1) above is the same as the total of the amount or amounts mentioned in head (2) above, the regulations may provide that no payment need be made in respect of the former or the latter⁷. The regulations may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of landfill tax to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under a duty to pay as is mentioned in head (1) above⁸. The regulations may include provision treating any duty to pay mentioned in heads (1) and (2) above as discharged accordingly⁹.

Regulations may also make provision in relation to any case where:

- 257 (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax¹⁰ (or taxes) under their care and management¹¹; and
- 258 (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of landfill tax¹².

The regulations may provide that if the total of the amount or amounts mentioned in head (a) above exceeds the total of the amount or amounts mentioned in head (b) above, the latter must be set off against the former¹³, and, conversely, that if the total of the amount or amounts mentioned in head (b) above exceeds the total of the amount or amounts mentioned in head (a) above, the Commissioners may set off the latter in paying the former¹⁴. If the total of the amount or amounts mentioned in head (a) above is the same as the total of the amount or amounts mentioned in head (b) above, the regulations may provide that no payment need be made in respect of the former or the latter¹⁵. The regulations may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under a duty to pay as is mentioned in head (a) above¹⁶. The regulations may include

provision treating any duty to pay mentioned in heads (a) and (b) above as discharged accordingly¹⁷.

- 1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 2 Finance Act 1996 s 60, Sch 5 para 42(1)(a). As to the meaning of 'landfill tax' see PARA 901.
- 3 References in the Finance Act 1996 Sch 5 para 42(1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalty: Sch 5 para 42(6). For these purposes, 'tax' includes 'duty': Sch 5 para 42(7).
- 4 Finance Act 1996 Sch 5 para 42(1)(b). As to the regulations made under Sch 5 para 42 and Sch 5 para 43 (see the text to notes 10-17) see the Landfill Tax Regulations 1996, SI 1996/1527, regs 45-47; and PARAS 963-965.
- 5 Finance Act 1996 Sch 5 para 42(2). As to set-off generally see **CIVIL PROCEDURE** vol 11 (2009) PARAS 634-722.
- 6 Finance Act 1996 Sch 5 para 42(3).
- 7 Finance Act 1996 Sch 5 para 42(4).
- 8 Finance Act 1996 Sch 5 para 42(4A) (added by the Finance Act 1997 s 50(1), Sch 5 Pt II para 6(2)(c)).
- 9 Finance Act 1996 Sch 5 para 42(5).
- 10 References in the Finance Act 1996 Sch 5 para 43(1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalty: Sch 5 para 43(6). For these purposes, 'tax' includes 'duty': Sch 5 para 43(7).
- 11 Finance Act 1996 Sch 5 para 43(1)(a).
- 12 Finance Act 1996 Sch 5 para 43(1)(b). As to the regulations made see note 4.
- 13 Finance Act 1996 Sch 5 para 43(2).
- 14 Finance Act 1996 Sch 5 para 43(3).
- 15 Finance Act 1996 Sch 5 para 43(4).
- 16 Finance Act 1996 Sch 5 para 43(4A) (added by the Finance Act 1997 Sch 5 Pt II para 6(2)(c)).
- 17 Finance Act 1996 Sch 5 para 43(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(3) SET-OFF/963. Landfill tax amount owed to Commissioners for Revenue and Customs.

963. Landfill tax amount owed to Commissioners for Revenue and Customs.

Where:

- 259 (1) a person is under a duty to pay to the Commissioners for Her Majesty's Revenue and Customs¹ at any time an amount or amounts in respect of landfill tax²; and
- 260 (2) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any tax or taxes under their care and management³,

and the total of the amount or amounts mentioned in head (1) above exceeds the total of the amount or amounts mentioned in head (2) above, the latter must be set off against the former⁴. Conversely, where the total of the amount or amounts mentioned in head (2) above exceeds the total of the amount or amounts mentioned in head (1) above, the Commissioners may set off the latter in paying the former⁵. Where the total of the amount or amounts mentioned in head (1) above is the same as the total of the amount or amounts mentioned in head (2) above, no payment need be made in respect of either⁶. Where an amount has been set off in accordance with any of the above provisions, the duty of both the person and the Commissioners to pay the amount or amounts concerned must be treated as having been discharged accordingly⁷.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 Landfill Tax Regulations 1996, SI 1996/1527, reg 45(1)(a). As to the meaning of 'landfill tax' see PARA 901. References in reg 45(1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to amounts of penalty, surcharge or interest: reg 45(6). For these purposes, 'tax' includes 'duty': reg 45(7).

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 45(1)(b). See note 2.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 45(2). Regulation 45 is subject to reg 47 (insolvency procedure: see PARA 965): reg 45(1). As to set-off generally see **CIVIL PROCEDURE** vol 11 (2009) PARAS 634-722.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 45(3).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 45(4).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 45(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(3) SET-OFF/964. Landfill tax amount owed by Commissioners for Revenue and Customs.

964. Landfill tax amount owed by Commissioners for Revenue and Customs.

Where:

- 261 (1) a person is under a duty to pay to the Commissioners for Her Majesty's Revenue and Customs¹ at any time an amount or amounts in respect of any tax² or taxes under their care and management³; and
- 262 (2) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of landfill tax⁴,

and the total of the amount or amounts mentioned in head (1) above exceeds the total of the amount or amounts mentioned in head (2) above, the latter must be set off against the former⁵. Conversely, where the total of the amount or amounts mentioned in head (2) above exceeds the total of the amount or amounts mentioned in head (1) above, the Commissioners may set off the latter in paying the former⁶. Where the total of the amount or amounts mentioned in head (1) above is the same as the total of the amount or amounts mentioned in head (2) above, no payment need be made in respect of either⁷. Where an amount has been set off in accordance with any of the above provisions, the duty of both the person and the Commissioners to pay the amount or amounts concerned shall be treated as having been discharged accordingly⁸.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 As to the meanings of 'an amount in respect of a particular tax' and 'tax' see PARA 963 note 2; definitions applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 46(6).

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 46(1)(a).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 46(1)(b). As to the meaning of 'landfill tax' see PARA 901.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 46(2). Regulation 46 is subject to reg 47 (insolvency procedure: see PARA 965): reg 46(1). As to set-off generally see **CIVIL PROCEDURE** vol 11 (2009) PARAS 634-722.

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 46(3).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 46(4).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 46(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/7. RECOVERY OF TAX DUE/(3) SET-OFF/965. No set-off where insolvency procedure applied.

965. No set-off where insolvency procedure applied.

The provisions relating to set-off¹ do not require the credit² to be set against the debit³ in any case where:

- 263 (1) an insolvency procedure⁴ has been applied⁵ to the person entitled to the credit⁶;
- 264 (2) the credit became due after that procedure was so applied⁷;
- 265 (3) the liability to pay the debit either arose before that procedure was so applied or (having risen afterwards) relates to, or to matters occurring in the course of: (a) the carrying on of any business; or (b) in the case of a specified sum⁸, the carrying out of taxable activities⁹, at times before the procedure was so applied¹⁰.

1 In the Landfill Tax Regulations 1996, SI 1996/1527, regs 45, 46: see PARAS 963-964. As to set-off generally see **CIVIL PROCEDURE** vol 11 (2009) PARAS 634-722.

2 In any such amount as is mentioned in the Landfill Tax Regulations 1996, SI 1996/1527, reg 45(1)(b) (see PARA 963) or reg 46(1)(b) (see PARA 964).

3 In any such sum as is mentioned in the Landfill Tax Regulations 1996, SI 1996/1527, reg 45(1)(a) (see PARA 963) or reg 46(1)(a) (see PARA 964).

4 Subject to the Landfill Tax Regulations 1996, SI 1996/1527, reg 47(3) (see note 5), the following are the times when an insolvency procedure is to be taken, for the purposes of reg 47, to have been applied to any person, that is to say:

- 69 (1) when a bankruptcy order, winding-up order, administration order or award of sequestration is made in relation to that person or that person enters administration (reg 47(2)(a) (amended by SI 2003/2096));
- 70 (2) when that person is put into administrative receivership (Landfill Tax Regulations 1996, SI 1996/1527, reg 47(2)(b));
- 71 (3) when that person, being a corporation, passes a resolution for voluntary winding-up (reg 47(2)(c));
- 72 (4) when any voluntary arrangement approved in accordance with the Insolvency Act 1986 Pt I (ss 1-7) or Pt VIII (ss 252-263G) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, Pt 1 (arts 1-13) or Pt VIII Ch II (arts 226-237) comes into force in relation to that person (Landfill Tax Regulations 1996, SI 1996/1527, reg 47(2)(d));
- 73 (5) when a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**) takes effect in relation to that person (Landfill Tax Regulations 1996, SI 1996/1527, reg 47(2)(e));
- 74 (6) when that person's estate becomes vested in any other person as that person's trustee under a trust deed (reg 47(2)(f)).

5 References in the Landfill Tax Regulations 1996, SI 1996/1527, reg 47, in relation to any person, to the application of an insolvency procedure to that person do not include:

- 75 (1) the making of a bankruptcy order, winding-up order, or award of sequestration or that person entering administration at a time when any such arrangements or deed as is mentioned in reg 47(2)(d)-(f) (see note 4 heads (4)-(6)) is in force in relation to that person (reg 47(3)(a) (amended by SI 2003/2096));
- 76 (2) the making of a winding-up order at any of the following times:

4. (a) immediately upon the appointment of the administrator ceasing to have effect (Landfill Tax Regulations 1996, SI 1996/1527, reg 47(3)(b)(i) (amended by SI 2003/2096));
4
 5. (b) when that person is being wound-up voluntarily (Landfill Tax Regulations 1996, SI 1996/1527, reg 47(3)(b)(ii));
5
 6. (c) when that person is in administrative receivership (reg 47(3)(b)(iii)); or
6
- 77 (3) the making of an administration order in relation to that person at any time when that person is in administrative receivership (reg 47(3)(c)).

For the purposes of reg 47, a person is regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in reg 47(2) to a person being put into administrative receivership must be construed accordingly: reg 47(4).

- 6 Landfill Tax Regulations 1996, SI 1996/1527, reg 47(1)(a).
- 7 Landfill Tax Regulations 1996, SI 1996/1527, reg 47(1)(b).
- 8 le such as is mentioned in the Landfill Tax Regulations 1996, SI 1996/1527, reg 46(1)(b): see PARA 964.
- 9 As to the meaning of 'taxable activity' see PARA 920 note 1.
- 10 Landfill Tax Regulations 1996, SI 1996/1527, reg 47(1)(c).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/8. RECOVERY OF OVERPAID TAX/966. Repayment of tax overpaid.

8. RECOVERY OF OVERPAID TAX

966. Repayment of tax overpaid.

Where a person has paid an amount to the Commissioners for Her Majesty's Revenue and Customs¹ by way of tax which was not tax due to them, they are liable to repay the amount to him². The Commissioners are only liable to repay an amount under this provision on a claim being made for the purpose³. It is a defence, in relation to such a claim, that repayment of an amount would unjustly enrich the claimant⁴. The Commissioners are not liable, on such a claim, to repay any amount paid to them more than three years before the making of the claim⁵. Such a claim must be made in such form and manner and must be supported by such documentary evidence as may be prescribed⁶ by regulations⁷. Except as provided by this provision, the Commissioners are not liable to repay an amount paid to them by way of tax by virtue of the fact that it was not tax due to them⁸.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 Finance Act 1996 Sch 5 para 14(1).

3 Finance Act 1996 Sch 5 para 14(2).

4 Finance Act 1996 Sch 5 para 14(3).

5 Finance Act 1996 Sch 5 para 14(4) (substituted by the Finance Act 1997 s 50(1), Sch 5 Pt II para 5(3)). As from 1 April 2010 the Finance Act 1996 Sch 5 para 14(4) is to be amended by the Finance Act 2009 s 99, Sch 51 para 38 so that the Commissioners are not liable to repay any amount paid to them more than four years before the making of the claim.

6 'Prescribed' means prescribed by an order or regulations under the Finance Act 1996 Pt III (ss 39-71): s 70(1). See note 7.

7 Finance Act 1996 Sch 5 para 14(5). Except where the amount to which the claim relates has been entered in a return in accordance with the Landfill Tax Regulations 1996, SI 1996/1527, reg 13 (correction of errors: see PARA 936), or is included in an amount so entered, any claim under the Finance Act 1996 Sch 5 para 14 must be made in writing to the Commissioners and must, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated: Landfill Tax Regulations 1996, SI 1996/1527, reg 14.

8 Finance Act 1996 Sch 5 para 14(6).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/8. RECOVERY OF OVERPAID TAX/967. Reimbursement arrangements.

967. Reimbursement arrangements.

The following applies without prejudice to reimbursement arrangements made before 11 February 1998¹. 'Reimbursement arrangements' means any arrangements (whether made before, on or after 30 January 1998) for the purposes of a claim² which: (1) are made by a claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and (2) provide for the reimbursement of persons ('consumers') who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to the Commissioners for Her Majesty's Revenue and Customs³.

For the purpose of the defence by the Commissioners for Her Majesty's Revenue and Customs that repayment by them of an amount claimed would unjustly enrich the claimant⁴, reimbursement arrangements made by a claimant are to be disregarded except where they include specified provisions⁵ and are supported by specified undertakings⁶.

The specified provisions are provisions providing that:

- 266 (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates⁷;
- 267 (b) no deduction will be made from the relevant amount⁸ by way of fee or charge, howsoever expressed or effected⁹;
- 268 (c) reimbursement will be made only in cash or by cheque¹⁰;
- 269 (d) any part of the relevant amount that is not reimbursed by the time mentioned in head (a) will be repaid by the claimant to the Commissioners¹¹;
- 270 (e) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under heads (a), (b)¹²; and
- 271 (f) the required records¹³ will be kept by the claimant and produced¹⁴ by him to the Commissioners, or to an officer of theirs as required by notice¹⁵.

The undertakings supporting the arrangements must be given to the Commissioners by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made¹⁶. The undertakings must be in writing, must be signed and dated by the claimant, and must be to the effect that:

- 272 (i) at the date of the undertakings he is able to identify the names and addresses of those consumers whom he has reimbursed or whom he intends to reimburse¹⁷;
- 273 (ii) he will apply the whole of the relevant amount repaid to him, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by no later than 90 days after his receipt of that amount (except in so far as he has already so reimbursed them)¹⁸;
- 274 (iii) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such consumers by no later than 90 days after his receipt of that interest¹⁹;
- 275 (iv) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in heads (ii) and (iii)²⁰;
- 276 (v) he will keep the required records²¹;

277 (vi) he will comply with any notice²² given to him concerning the production of such records²³.

1 le without prejudice to the Landfill Tax Regulations 1996, SI 1996/1527, reg 14H: see note 6.

2 'Claim' means a claim made (irrespective of when it was made) under the Finance Act 1996 s 60, Sch 5 para 14 (see PARA 966) for repayment of an amount paid to the Commissioners for Her Majesty's Revenue and Customs by way of tax which was not tax due to them; and 'claimed' and 'claimant' must be construed accordingly: Landfill Tax Regulations 1996, SI 1996/1527, regs 2(1), 14A (reg 14A added by SI 1998/61). As to the meaning of 'landfill tax' see PARA 901. As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 14A (as added: see note 2).

4 le for the purpose of the Finance Act 1996 Sch 5 para 14(3): see PARA 966.

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 14B(a) (reg 14B added by SI 1998/61). The Landfill Tax Regulations 1996, SI 1996/1527, reg 14B is without prejudice to reg 14H (see note 6): reg 14B (as so added).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 14B(b) (as added: see note 5).

Reimbursement arrangements made by a claimant before 11 February 1998 must not be disregarded for the purposes of the Finance Act 1996 Sch 5 para 14(3) (see PARA 966) if, not later than 11 March 1998:

78 (1) he includes in those arrangements (if they are not already included) the provisions described in the Landfill Tax Regulations 1996, SI 1996/1527, reg 14C (see the text to notes 7-15) (reg 14H(a) (reg 14H added by SI 1998/61)); and

79 (2) he gives the undertakings described in the Landfill Tax Regulations 1996, SI 1996/1527, reg 14G (see the text to notes 16-23) (reg 14H(b) (as so added)).

7 Landfill Tax Regulations 1996, SI 1996/1527, reg 14C(a) (reg 14C added by SI 1998/61).

8 'Relevant amount' means that part (which may be the whole) of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers: Landfill Tax Regulations 1996, SI 1996/1527, reg 14A (as added: see note 2). The claimant must, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of reg 14C(d), (e) within 14 days of the expiration of the period of 90 days referred to in reg 14C(a): reg 14D (added by SI 1998/61).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 14C(b) (as added: see note 7).

10 Landfill Tax Regulations 1996, SI 1996/1527, reg 14C(c) (as added: see note 7).

11 Landfill Tax Regulations 1996, SI 1996/1527, reg 14C(d) (as added: see note 7).

12 Landfill Tax Regulations 1996, SI 1996/1527, reg 14C(e) (as added: see note 7).

13 le the records described in the Landfill Tax Regulations 1996, SI 1996/1527, reg 14E (see PARA 968).

14 le in accordance with the Landfill Tax Regulations 1996, SI 1996/1527, reg 14F (see PARA 969).

15 Landfill Tax Regulations 1996, SI 1996/1527, reg 14C(f) (as added: see note 7).

16 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(1) (reg 14G added by SI 1998/61).

17 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(2)(a) (as added: see note 16).

18 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(2)(b) (as added: see note 16).

19 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(2)(c) (as added: see note 16).

20 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(2)(d) (as added: see note 16).

21 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(2)(e) (as added: see note 16). As to the required records see PARA 968.

22 le a notice given in accordance with the Landfill Tax Regulations 1996, SI 1996/1527, reg 14F (see PARA 969).

23 Landfill Tax Regulations 1996, SI 1996/1527, reg 14G(2)(f) (as added: see note 16).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/8. RECOVERY OF OVERPAID TAX/968. Records.

968. Records.

A claimant for repayment of tax¹ must keep records of the following matters:

- 278 (1) the names and addresses of those consumers² whom he has reimbursed or whom he intends to reimburse³;
- 279 (2) the total amount reimbursed to each such consumer⁴;
- 280 (3) the amount of interest included in each total amount reimbursed to each consumer⁵;
- 281 (4) the date that each reimbursement is made⁶.

1 See PARA 967 note 2.

2 See PARA 967.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 14E(a) (reg 14E added by SI 1998/61).

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 14E(b) (as added: see note 3).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 14E(c) (as added: see note 3).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 14E(d) (as added: see note 3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/8. RECOVERY OF OVERPAID TAX/969. Production of records.

969. Production of records.

Where a claimant for repayment of tax¹ is given notice to that effect, he must, in accordance with such notice produce to the Commissioners for Her Majesty's Revenue and Customs², or to an officer of theirs, the records that he is required to keep³. A notice so given must:

- 282 (1) be in writing⁴;
- 283 (2) state the place and time at which, and the date on which, the records are to be produced⁵; and
- 284 (3) be signed and dated by the Commissioners, or by an officer of theirs⁶,

and may be given before or after, or both before and after the Commissioners have paid the relevant amount⁷ to the claimant⁸.

1 See PARA 967 note 2.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 14F(1) (reg 14F added by SI 1998/61). As to the records which must be kept see the Landfill Tax Regulations 1996, SI 1996/1527, reg 14E; and PARA 968.

4 Landfill Tax Regulations 1996, SI 1996/1527, reg 14F(2)(a) (as added: see note 3).

5 Landfill Tax Regulations 1996, SI 1996/1527, reg 14F(2)(b) (as added: see note 3).

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 14F(2)(c) (as added: see note 3).

7 As to the meaning of 'relevant amount' see PARA 967 note 8.

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 14F(2) (as added: see note 3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(1) PROVISION OF INFORMATION/970. Duty to give information.

9. PROVISION OF INFORMATION AND INFORMATION AREAS

(1) PROVISION OF INFORMATION

970. Duty to give information.

Every person who is concerned (in whatever capacity) with any landfill disposal¹ must furnish to the Commissioners for Her Majesty's Revenue and Customs² such information relating to the disposal as they may reasonably require³. Such information must be furnished within such time and in such form as the Commissioners may reasonably require⁴.

1 As to the meaning of 'landfill disposal' see PARA 902 note 4.

2 As to the Commissioners see PARA 901 note 2.

3 Finance Act 1996 s 60, Sch 5 para 1(1).

4 Finance Act 1996 Sch 5 para 1(2). As to the penalty for failure to provide information as required see PARA 990. As from 1 April 2010, the Finance Act 1996 Sch 5 para 1 is repealed: Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009, SI 2009/3054, art 3, Schedule para 7(a). See PARA 985 for the replacement cross-tax information powers under the Finance Act 2008 s 113, Sch 36.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(1) PROVISION OF INFORMATION/971. Power to make regulations relating to material at landfill sites.

971. Power to make regulations relating to material at landfill sites.

Regulations may make provision about giving the Commissioners for Her Majesty's Revenue and Customs¹ information relating to material² at a landfill site³ or a part of a landfill site⁴. Such regulations may require a person to give information⁵. They may require a person, or authorise an officer of Revenue and Customs to require a person, to designate a part of a landfill site (an 'information area') and may require material, or prescribed descriptions of material, to be deposited in an information area⁶. Such regulations may make provision about information relating to what is done with material⁷.

1 As to the Commissioners see PARA 901 note 2.

2 As to the meaning of 'material' see PARA 902 note 3.

3 As to the meaning of 'landfill site' see PARA 902 note 5.

4 Finance Act 1996 s 60, Sch 5 para 1A(1) (Sch 5 para 1A added by the Finance Act 2009 s 119, Sch 60 para 7). The Finance Act 1996 Sch 5 para 1A(2)-(4) (see the text to notes 5 to 7) does not prejudice the generality of Sch 5 para 1A(1): Sch 5 para 1A(5) (as so added). As to the regulations made under Sch 5 para 1A see the Landfill Tax Regulations 1996, SI 1996/1527, reg 16A; and PARA 972.

5 Finance Act 1996 Sch 5 para 1A(2) (as added: see note 4).

6 Finance Act 1996 Sch 5 para 1A(3) (as added: see note 4).

7 Finance Act 1996 Sch 5 para 1A(4) (as added: see note 4). As to the penalty for failure to comply with regulations see PARA 991.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(2) INFORMATION AREAS/972. Designation of, and duty to deposit material in, information areas.

(2) INFORMATION AREAS

972. Designation of, and duty to deposit material in, information areas.

An officer of Revenue and Customs is authorised to require a person to designate a part of a landfill site¹ (an 'information area'), and a person must designate an information area if so required².

Where material³ at a landfill site is not going to be disposed of as waste⁴ and the Commissioners for Her Majesty's Revenue and Customs⁵ consider, or an officer of theirs considers, there to be a risk to the revenue, the material must be deposited in an information area⁶. In such a case, a registrable person⁷ must maintain a record in relation to the information of the following information, and give this information to the Commissioners, or an officer, if requested:

- 285 (1) the weight and description of all material deposited there:
- 286 (2) the intended destination or use of all such material and, where any material has been removed or used, the actual destination or use of that material; and
- 287 (3) the weight and description of any such material sorted or removed⁸.

A designation ceases to have effect if a notice in writing to that effect is given to a registrable person by the Commissioners or by an officer of Revenue and Customs⁹.

As to the meaning of 'landfill site' see PARA 902 note 5; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

Landfill Tax Regulations 1996, SI 1996/1527, reg 16A(1) (added by SI 2009/1930).

3 As to the meaning of 'material' see PARA 902 note 3.

4 As to the disposal of material as waste see PARA 902 note 3.

5 As to the Commissioners see PARA 901 note 2.

6 Landfill Tax Regulations 1996, SI 1996/1527, reg 16A(2)(a) (as added: see note 2).

7 As to the meaning of 'registrable person' see PARA 958 note 1; definition applied by virtue of the Landfill Tax Regulations 1996, SI 1996/1527, reg 2(1).

8 Landfill Tax Regulations 1996, SI 1996/1527, reg 16A(2)(b), (4) (as added: see note 2).

9 Landfill Tax Regulations 1996, SI 1996/1527, reg 16A(3) (as added: see note 2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(3) SITE RESTORATION/973. Information relating to site restoration.

(3) SITE RESTORATION

973. Information relating to site restoration.

Before commencing restoration of all or part of a landfill site¹, the operator of the site must notify the Commissioners for Her Majesty's Revenue and Customs² in writing that the restoration³ is to commence and provide such other written information as the Commissioners may require generally or in the particular case⁴.

1 As to the meaning of 'landfill site' see PARA 902 note 5.

2 As to the Commissioners see PARA 901 note 2.

3 'Restoration' means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations: Finance Act 1996 s 60, Sch 5 para 1B(2) (Sch 5 para 1B added by the Finance Act 2009 s 119, Sch 60 para 11). The following are 'relevant instruments': a planning consent; a waste management licence; and a permit authorising the disposal of waste on or in land: Landfill Tax Regulations 1996, SI 1996/1527, Sch 5 para 1B(3) (as so added). As to planning consents generally see **TOWN AND COUNTRY PLANNING**; and as to waste management licences see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 620, 662 et seq.

4 Finance Act 1996 Sch 5 para 1B(1) (as added: see note 3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(4) PUBLICATION AND DISCLOSURE OF INFORMATION/974. Disclosure of information.

(4) PUBLICATION AND DISCLOSURE OF INFORMATION

974. Disclosure of information.

Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners for Her Majesty's Revenue and Customs¹ may disclose information to:

- 288 (1) the Secretary of State²;
- 289 (2) the Environment Agency³;
- 290 (3) the Scottish Environment Protection Agency⁴;
- 291 (4) the Department of the Environment for Northern Ireland⁵;
- 292 (5) a district council in Northern Ireland⁶; or
- 293 (6) an authorised officer⁷ of any person (a 'principal') mentioned in heads (1) to (5) above⁸,

for the purpose of assisting the principal concerned in the performance of the principal's duties⁹; and any person mentioned in heads (1) to (6) above may disclose information to the Commissioners or to an authorised officer of the Commissioners for the purpose of assisting the Commissioners in the performance of duties in relation to landfill tax¹⁰. Information that has been disclosed to a person by virtue of this provision must not be disclosed by him except:

- 294 (a) to another person to whom (instead of him) disclosure could by virtue of this provision have been made¹¹; or
- 295 (b) for the purpose of any proceedings connected with the operation of any provision of, or made under, any enactment in relation to the environment or to tax¹².

No charge may be made for a disclosure made by virtue of these provisions¹³.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 Finance Act 1996 s 60, Sch 5 para 35(1)(a). In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

3 Finance Act 1996 Sch 5 para 35(1)(b). As to the meaning of 'Environment Agency' see PARA 912 note 10. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

4 Finance Act 1996 Sch 5 para 35(1)(c). As to the meaning of 'Scottish Environment Protection Agency' see PARA 912 note 11.

5 Finance Act 1996 Sch 5 para 35(1)(d).

6 Finance Act 1996 Sch 5 para 35(1)(e).

7 References in the Finance Act 1996 Sch 5 para 35(1)-(3) to an authorised officer of any person (the 'principal') are references to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of Sch 5 para 35: Sch 5 para 35(4). The Secretary of State must notify

the Commissioners in writing of the name of any person designated by the Secretary of State under Sch 5 para 35(4): Sch 5 para 35(5).

8 Finance Act 1996 Sch 5 para 35(1)(f).

9 Finance Act 1996 Sch 5 para 35(1).

10 Finance Act 1996 Sch 5 para 35(2).

11 Finance Act 1996 Sch 5 para 35(3)(a).

12 Finance Act 1996 Sch 5 para 35(3)(b).

13 Finance Act 1996 Sch 5 para 35(6).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(4) PUBLICATION AND DISCLOSURE OF INFORMATION/975. Publication of information.

975. Publication of information.

The Commissioners for Her Majesty's Revenue and Customs¹ may publish, by such means as they think fit, information which: (1) is derived from the landfill tax register²; and (2) falls within any of the descriptions set out below³, namely:

- 296 (a) the names of registered persons⁴;
- 297 (b) the addresses of any sites or other premises at which they carry on business⁵;
- 298 (c) the registration numbers assigned to them in the register⁶;
- 299 (d) the fact (where it is the case) that the registered person is a body corporate which is treated⁷ as a member of a group⁸;
- 300 (e) the names of the other bodies corporate so treated as members of the group⁹;
- 301 (f) the addresses of any sites or other premises at which those other bodies carry on business¹⁰.

Information may be published in accordance with this provision notwithstanding any obligation not to disclose the information that would otherwise apply¹¹.

- 1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 2 Finance Act 1996 s 60, Sch 5 para 36(1)(a).
- 3 Finance Act 1996 Sch 5 para 36(1)(b).
- 4 Finance Act 1996 Sch 5 para 36(2)(a). As to the meaning of 'registered person' see PARA 922 note 13.
- 5 Finance Act 1996 Sch 5 para 36(2)(b).
- 6 Finance Act 1996 Sch 5 para 36(2)(c).
- 7 Ie under the Finance Act 1996 s 59: see PARA 925.
- 8 Finance Act 1996 Sch 5 para 36(2)(d).
- 9 Finance Act 1996 Sch 5 para 36(2)(e).
- 10 Finance Act 1996 Sch 5 para 36(2)(f).
- 11 Finance Act 1996 Sch 5 para 36(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/9. PROVISION OF INFORMATION AND INFORMATION AREAS/(4) PUBLICATION AND DISCLOSURE OF INFORMATION/976. Evidence by certificate etc.

976. Evidence by certificate etc.

A certificate of the Commissioners for Her Majesty's Revenue and Customs¹:

- 302 (1) that a person was or was not at any time registered²; or
- 303 (2) that any return required by regulations³ has not been made or had not been made at any time⁴;

is sufficient evidence of that fact until the contrary is proved⁵.

A photograph of any document furnished to the Commissioners for the purposes of the landfill tax provisions⁶ and certified by them to be such a photograph is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself⁷. Any document purporting to be such a certificate is to be taken to be such a certificate until the contrary is proved⁸.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 Finance Act 1996 s 60, Sch 5 para 37(1)(a). The reference to registration in the text is a reference to registration under s 47: see PARA 920.

3 I.e. regulations made under the Finance Act 1996 s 49: see PARA 935.

4 Finance Act 1996 Sch 5 para 37(1)(b).

5 Finance Act 1996 Sch 5 para 37(1) (amended by the Finance Act 2008 s 138(2), Sch 44 para 7). As to certificates of debt see the Commissioners for Revenue and Customs Act 2005 s 25A; and **INCOME TAXATION**.

6 I.e. the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

7 Finance Act 1996 Sch 5 para 37(2).

8 Finance Act 1996 Sch 5 para 37(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/977. Power to make orders and regulations.

10. OTHER REVENUE AND CUSTOMS POWERS

977. Power to make orders and regulations.

The power to make an order under the statutory provisions relating to landfill tax provisions¹ is generally exercisable by the Treasury². Any power to make regulations under the landfill tax provisions is exercisable by the Commissioners for Her Majesty's Revenue and Customs³. Any such power to make an order or regulations is exercisable by statutory instrument⁴.

Certain orders must be laid before the House of Commons; and unless such an order is approved by that House before the expiration of a period of 28 days beginning with the date on which it was made it ceases to have effect on the expiration of that period, but without prejudice to anything previously done under the order or to the making of a new order⁵. A statutory instrument containing any other order or regulations is subject to annulment in pursuance of a resolution of the House of Commons⁶.

Any power to make an order or regulations under the landfill tax provisions may be exercised as regards prescribed⁷ cases or descriptions of case⁸, and may be exercised differently in relation to different cases or descriptions of case⁹.

An order or regulations may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury or the Commissioners (as the case may be) to be necessary or expedient¹⁰.

Though not part of the law relating to landfill tax, the Commissioners have published information notes for the guidance of landfill site operators¹¹.

1 le the Finance Act 1996 Pt III (ss 39-71); see PARA 901 note 1.

2 See the Finance Act 1996 s 71(1). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 Finance Act 1996 s 71(2). As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 Finance Act 1996 s 71(3).

5 Finance Act 1996 s 71(4). In reckoning any such period no account may be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days: s 71(5).

Section 71(4) applies to:

- 80 (1) an order under s 42(3) (see PARA 906) providing for material which would otherwise be qualifying material not to be qualifying material (s 71(7)(a));
- 81 (2) an order under s 46 (see PARA 917) which produces the result that a disposal which would otherwise not be a taxable disposal is a taxable disposal (s 71(7)(b));
- 82 (3) an order under s 63(5) (see PARA 905) other than one which provides only that an earlier order under s 63(5) is not to apply to material (s 71(7)(c));
- 83 (4) an order under s 65A (see PARA 903) which produces the result that a landfill site activity which would not otherwise be prescribed for the purposes of s 65A is so prescribed (s 71(7)(ca) (added by the Finance Act 2009 s 119, Sch 60 para 3));

84 (5) an order under the Finance Act 1996 s 65A (see PARA 903) which amends Pt III or any enactment contained in an Act (s 71(7)(cb) (added by the Finance Act 2009 Sch 60 para 3));

85 (6) an order under the Finance Act 1996 s 65(5) (see PARA 902) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal (s 71(7)(d)).

As to the meaning of 'material' see PARA 902 note 3. As to the meaning of 'qualifying material' see PARA 906. As to the meaning of 'taxable disposal' see PARA 902. As to the meaning of 'disposal by way of landfill' see PARA 902 note 4.

6 Finance Act 1996 s 71(6).

7 'Prescribed' means prescribed by an order or regulations under the Finance Act 1996 Pt III: s 70(1).

8 Finance Act 1996 s 71(8)(a).

9 Finance Act 1996 s 71(8)(b).

10 Finance Act 1996 s 71(9). No specific provision of Pt III about an order or regulations is to prejudice the generality of s 71(8), (9): s 71(10).

11 The information notes were originally announced in *Business Brief* 18/96, 27 August 1996. See now Notice LFT1 *A General Guide to Landfill Tax* and Notice LFT2 *Reclamation of Contaminated Land*.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/978. Documents.

978. Documents.

Every person who is concerned (in whatever capacity) with any landfill disposal¹ must upon demand made by an authorised person² produce or cause to be produced for inspection by that person any documents relating to the disposal³. Where an authorised person has power so to require the production of any documents from any person, he has the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; but where any such other person claims a lien on any document produced by him, the production is without prejudice to the lien⁴. Such documents are to be produced at such time and place as the authorised person may reasonably require⁵.

An authorised person may take copies of, or make extracts from, any document so produced⁶. If it appears to him to be necessary to do so, an authorised person may, at a reasonable time and for a reasonable period, remove any document so produced and must, on request, provide a receipt for it; and where a lien is claimed on a document the removal of the document is not to be regarded as breaking the lien⁷. Where a document so removed by an authorised person is reasonably required for any purpose he must, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced⁸.

Where any documents removed under the above powers are lost or damaged the Commissioners for Her Majesty's Revenue and Customs are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents⁹.

1 As to the meaning of 'landfill disposal' see PARA 902 note 4.

2 As to the meaning of 'authorised person' see PARA 907 note 9.

3 Finance Act 1996 s 60, Sch 5 para 3(1). As from 1 April 2010, the Finance Act 1996 Sch 5 para 3 is repealed: Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009, SI 2009/3054, art 3, Schedule para 7(a). See PARA 985 for the replacement cross-tax information powers under the Finance Act 2008 s 113, Sch 36.

4 Finance Act 1996 Sch 5 para 3(2). As to lien generally see **LIEN**.

5 Finance Act 1996 Sch 5 para 3(3).

6 Finance Act 1996 Sch 5 para 3(4).

7 Finance Act 1996 Sch 5 para 3(5).

8 Finance Act 1996 Sch 5 para 3(6).

9 Finance Act 1996 Sch 5 para 3(7).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/979. Powers of entry and inspection.

979. Powers of entry and inspection.

For the purpose of exercising any powers under the landfill tax provisions¹ an authorised person² may at any reasonable time enter and inspect premises used in connection with the carrying on of a business³.

1 I.e. the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

2 As to the meaning of 'authorised person' see PARA 907 note 9.

3 Finance Act 1996 s 60, Sch 5 para 4. As from 1 April 2010, the Finance Act 1996 Sch 5 para 4 is repealed: Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009, SI 2009/3054, art 3, Schedule para 7(a). See PARA 985 for the replacement cross-tax inspection powers under the Finance Act 2008 s 113, Sch 36.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/980. Order for access to recorded information.

980. Order for access to recorded information.

Where, on an application by an authorised person¹, a justice of the peace is satisfied that there are reasonable grounds for believing²:

- 304 (1) that an offence in connection with landfill tax³ is being, has been or is about to be committed⁴; and
- 305 (2) that any recorded information (including any document of any nature whatsoever) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person⁵,

he may make an order for access⁶.

Such an access order is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates must⁷:

- 306 (a) give an authorised person access to it⁸; and
- 307 (b) permit an authorised person to remove and take away any of it which he reasonably considers necessary⁹,

not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify¹⁰.

Where the recorded information consists of information stored in electronic format, such an order has effect as an order to produce the information in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form and, if the authorised person wishes to remove it, in a form in which it can be removed¹¹.

1 As to the meaning of 'authorised person' see PARA 907 note 9.

2 Finance Act 1996 s 60, Sch 5 para 7(1).

3 As to the meaning of 'landfill tax' see PARA 901.

4 Finance Act 1996 Sch 5 para 7(1)(a).

5 Finance Act 1996 Sch 5 para 7(1)(b).

6 Finance Act 1996 Sch 5 para 7(1). Schedule 5 para 7 is without prejudice to Sch 5 paras 3, 4 (production of documents and powers of entry: see PARAS 978-979) or Sch 5 para 5 (repealed): Sch 5 para 7(5).

7 Finance Act 1996 Sch 5 para 7(2).

8 Finance Act 1996 Sch 5 para 7(2)(a). The reference to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it: Sch 5 para 7(3).

9 Finance Act 1996 Sch 5 para 7(2)(b).

10 Finance Act 1996 Sch 5 para 7(2).

11 Finance Act 1996 Sch 5 para 7(4) (amended by the Criminal Justice and Police Act 2001 s 70, Sch 2 Pt 2 para 13(1)(a), (b), (2)(h)).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/981. Removal of documents etc.

981. Removal of documents etc.

An authorised person¹ who removes anything in the exercise of a power of entry or an order for access² must, if so requested by a person showing himself: (1) to be the occupier of premises from which it was removed; or (2) to have had custody or control of it immediately before the removal, provide that person with a record of what he removed³. The authorised person must provide the record within a reasonable time from the making of the request for it⁴.

If a request for permission to be allowed access to anything which: (a) has been removed by an authorised person; and (b) is retained by the Commissioners for Her Majesty's Revenue and Customs⁵ for the purposes of investigating an offence, is made to the officer in overall charge⁶ of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of an authorised person⁷.

If a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer must:

- 308 (i) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it⁸; or
- 309 (ii) photograph or copy it, or cause it to be photographed or copied⁹.

Where anything is photographed or copied under head (ii) above the officer must supply the photograph or copy, or cause it to be supplied, to the person who made the request¹⁰. The photograph or copy must be supplied within a reasonable time of the request¹¹.

There is no duty under these provisions to allow access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice:

- 310 (A) that investigation¹²;
- 311 (B) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed¹³; or
- 312 (C) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in head (B) above¹⁴.

Where, on an application¹⁵, the appropriate judicial authority¹⁶ is satisfied that a person has failed to comply with such imposed requirements, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order¹⁷.

1 As to the meaning of 'authorised person' see PARA 907 note 9.

2 le by or under the Finance Act 1996 s 60, Sch 5 para 5 (repealed) or Sch 5 para 7 (see PARA 980).

3 Finance Act 1996 Sch 5 para 8(1).

4 Finance Act 1996 Sch 5 para 8(2).

5 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

6 Any reference in the Finance Act 1996 Sch 5 para 8 to the officer in overall charge of the investigation is a reference to the person whose name and address are indorsed on the warrant concerned as being the officer so in charge: Sch 5 para 8(8).

7 Finance Act 1996 Sch 5 para 8(3).

8 Finance Act 1996 Sch 5 para 8(4)(a).

9 Finance Act 1996 Sch 5 para 8(4)(b).

10 Finance Act 1996 Sch 5 para 8(5).

11 Finance Act 1996 Sch 5 para 8(6).

12 Finance Act 1996 Sch 5 para 8(7)(a).

13 Finance Act 1996 Sch 5 para 8(7)(b).

14 Finance Act 1996 Sch 5 para 8(7)(c).

15 Such an application is to be made:

86 (1) in the case of a failure to comply with any of the requirements imposed by Sch 5 para 8(1),
(2) (see the text and notes 1-4), by the occupier of the premises from which the thing in question
was removed or by the person who had custody or control of it immediately before it was so
removed (Sch 5 para 9(2)(a)); and

87 (2) in any other case, by the person who had such custody or control (Sch 5 para 9(2)(b)).

16 'Appropriate judicial authority' means a magistrates' court: Finance Act 1996 Sch 5 para 9(3)(a).

17 Finance Act 1996 Sch 5 para 9(1). An application for an order under Sch 5 para 9 is made by way of complaint: Sch 5 para 9(4). See **MAGISTRATES** vol 29(2) (Reissue) PARAS 681-686.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/982. Power to take samples.

982. Power to take samples.

If it appears to him necessary for the protection of the revenue against mistake or fraud, an authorised person¹ may at any time take, from material² which he has reasonable cause to believe is intended to be, is being, or has been disposed of as waste by way of landfill³, such samples as he may require with a view to determining how the material ought to be or to have been treated for the purposes of landfill tax⁴. Any such sample taken must be disposed of in such manner as the Commissioners for Her Majesty's Revenue and Customs⁵ may direct⁶.

1 As to the meaning of 'authorised person' see PARA 907 note 9.

2 As to the meaning of 'material' see PARA 902 note 3.

3 As to the meaning of 'a disposal of material by way of landfill' see PARA 902 note 4.

4 Finance Act 1996 s 60, Sch 5 para 10(1). As to the meaning of 'landfill tax' see PARA 901.

5 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

6 Finance Act 1996 Sch 5 para 10(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/983. Designation, direction or approval.

983. Designation, direction or approval.

Any designation, direction or approval by the Commissioners for Her Majesty's Revenue and Customs¹ under or for the purposes of the Landfill Tax Regulations 1996² is to be made or given by a notice in writing³.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 Ie the Landfill Tax Regulations 1996, SI 1996/1527.

3 Landfill Tax Regulations 1996, SI 1996/1527, reg 3.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/984. Service of notices etc.

984. Service of notices etc.

Any notice, notification or requirement to be served on, given to or made of any person for the purposes of the landfill tax provisions¹ may be served, given or made by sending it by post in a letter addressed to that person at his last or usual residence or place of business².

The following provisions apply to directions, specifications and conditions which the Commissioners for Her Majesty's Revenue and Customs³ or an authorised person⁴ may give or impose⁵. A direction, specification or condition given or imposed by the Commissioners may be withdrawn or varied by them⁶. A direction, specification or condition given or imposed by an authorised person may be withdrawn or varied by him or by another authorised person⁷. No direction, specification or condition has effect as regards any person it is intended to affect unless a notice containing it is served on him⁸, or other reasonable steps are taken with a view to bringing it to his attention⁹.

No withdrawal or variation of a direction, specification or condition has effect as regards any person the withdrawal or variation is intended to affect unless a notice containing the withdrawal or variation is served on him¹⁰, or other reasonable steps are taken with a view to bringing the withdrawal or variation to his attention¹¹.

1 le the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

2 Finance Act 1996 s 60, Sch 5 para 38.

3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

4 As to the meaning of 'authorised person' see PARA 907 note 9.

5 le under any provision of the Finance Act 1996 Sch 5 Pt VII paras 31-47: Sch 5 para 39(1).

6 Finance Act 1996 Sch 5 para 39(2).

7 Finance Act 1996 Sch 5 para 39(3).

8 Finance Act 1996 Sch 5 para 39(4)(a).

9 Finance Act 1996 Sch 5 para 39(4)(b).

10 Finance Act 1996 Sch 5 para 39(5)(a).

11 Finance Act 1996 Sch 5 para 39(5)(b).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/10. OTHER REVENUE AND CUSTOMS POWERS/985. Other powers.

985. Other powers.

The application of provisions of the Police and Criminal Evidence Act 1984 to investigations conducted by officers of Revenue and Customs is discussed elsewhere in this work¹.

Her Majesty's Revenue and Customs' cross-tax powers to obtain information and to inspect premises are also discussed elsewhere in this work².

1 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 856.

2 See the Finance Act 2008 s 113, Sch 36; and **INCOME TAXATION**. The powers are extended to apply to landfill tax as from 1 April 2010: see the Finance Act 2009 s 96, Sch 48; and the Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009, SI 2009/3054.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(1) CRIMINAL OFFENCES AND PENALTIES/986. Criminal offences.

11. OFFENCES AND PENALTIES

(1) CRIMINAL OFFENCES AND PENALTIES

986. Criminal offences.

A person is guilty of an offence if:

- 313 (1) being a registrable person¹, he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of landfill tax² by him or another registrable person³; or
- 314 (2) not being a registrable person, he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by a registrable person⁴.

A person guilty of such an offence⁵ is liable on summary conviction to a penalty of the statutory maximum or of three times the amount of the tax, whichever is the greater, or to imprisonment for a term not exceeding six months or to both⁶, and on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both⁷.

A person is guilty of an offence if with the requisite intent:

- 315 (a) he produces, furnishes or sends, or causes to be produced, furnished or sent, for the purposes of the landfill tax provisions⁸ any document which is false in a material particular⁹; or
- 316 (b) he otherwise makes use for those purposes of such a document¹⁰.

The requisite intent is intent to deceive or to secure that a machine will respond to the document as if it were a true document¹¹.

A person is guilty of an offence if in furnishing any information he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular¹².

A person guilty of an offence under either of the above provisions¹³ is liable on summary conviction to a penalty of the statutory maximum (or, in certain cases¹⁴, to the alternative penalty there specified if it is greater) or to imprisonment for a term not exceeding six months or to both¹⁵, and on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both¹⁶. Where the document concerned is a return or the information concerned is contained in or otherwise relevant to a return, the alternative penalty is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit and the amount (if any) by which the gross amount of tax was understated¹⁷.

A person is guilty of an offence if his conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions; and the preceding provisions apply whether or not the particulars of that offence or those offences are known¹⁸. A person guilty of an offence under this provision is liable on summary conviction to a penalty of the statutory maximum (or, if greater, three times the amount of any tax that was or was intended to be evaded by his conduct) or to imprisonment for a term not exceeding six

months or to both, and on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both¹⁹.

A person is guilty of an offence if he enters into a taxable landfill contract²⁰, or he makes arrangements for other persons to enter into such a contract, with reason to believe that tax in respect of the disposal concerned will be evaded²¹. A person guilty of an offence under this provision is liable on summary conviction to a penalty of level 5 on the standard scale or three times the amount of the tax, whichever is the greater²².

A person is guilty of an offence if he carries out taxable activities²³ without giving security (or further security) he has been required²⁴ to give²⁵. A person guilty of an offence under this provision is liable on summary conviction to a penalty of level 5 on the standard scale²⁶.

1 As to the meaning of 'registrable person' see PARA 958 note 1.

2 As to the meaning of 'landfill tax' see PARA 901. Any reference in the Finance Act 1996 s 60, Sch 5 para 15(1) to the evasion of landfill tax includes a reference to the obtaining of a payment under the provisions as to credits (see PARA 938 et seq): see Sch 5 para 15(2).

3 Finance Act 1996 Sch 5 para 15(1)(a).

4 Finance Act 1996 Sch 5 para 15(1)(b).

5 Is an offence under the Finance Act 1996 Sch 5 para 15(1).

6 Finance Act 1996 Sch 5 para 16(1)(a). The reference in Sch 5 para 16(1) to the amount of the tax is to be construed, in relation to tax itself or a payment falling within Sch 5 para 15(2), as a reference to the aggregate of: (1) the amount (if any) falsely claimed by way of credit (Sch 5 para 16(2)(a)); and (2) the amount (if any) by which the gross amount of tax was falsely understated (Sch 5 para 16(2)(b)). 'Credit' means credit for which provision is made by regulations under s 51 (see PARA 938): Sch 5 para 16(8)(a). 'Gross amount of tax' means the total amount of tax due before taking into account any deduction for which provision is made by the credit regulations (see PARA 938 et seq): Sch 5 para 16(8)(b). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

7 Finance Act 1996 Sch 5 para 16(1)(b).

8 Finance Act 1996 Sch 5 para 15(3)(a).

9 Is the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

10 Finance Act 1996 Sch 5 para 15(3)(b).

11 Finance Act 1996 Sch 5 para 15(3).

12 Finance Act 1996 Sch 5 para 15(4).

13 Is the Finance Act 1996 Sch 5 para 15(3) or Sch 5 para 15(4).

14 Is where the Finance Act 1996 Sch 5 para 16(4) applies. See the text to note 17.

15 Finance Act 1996 Sch 5 para 16(3)(a).

16 Finance Act 1996 Sch 5 para 16(3)(b).

17 Finance Act 1996 Sch 5 para 16(4).

18 Finance Act 1996 Sch 5 para 15(5).

19 Finance Act 1996 Sch 5 para 16(5). Schedule 5 paras 15(2), 16(2) apply for the purposes of Sch 5 para 16(5) as they apply respectively for the purposes of Sch 5 paras 15(1), 16(1): Sch 5 para 16(5).

20 A 'taxable landfill contract' is a contract under which there is to be a taxable disposal: Finance Act 1996 Sch 5 para 15(8). As to the meaning of 'taxable disposal' see PARA 902.

21 Finance Act 1996 Sch 5 para 15(6).

22 Finance Act 1996 Sch 5 para 16(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

23 As to the meaning of 'taxable activity' see PARA 920 note 1.

24 Ie under the Finance Act 1996 Sch 5 para 31: see PARA 1002.

25 Finance Act 1996 Sch 5 para 15(7).

26 Finance Act 1996 Sch 5 para 16(7). The Customs and Excise Management Act 1979 ss 145-155 (proceedings for offences, mitigation of penalties and certain other matters) apply in relation to offences under the Finance Act 1996 Sch 5 para 15 and penalties imposed under Sch 5 para 16 as they apply in relation to offences and penalties under the Customs and Excise Acts as defined in the Customs and Excise Management Act 1979 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1188 et seq): Finance Act 1996 Sch 5 para 17.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(2) CIVIL EVASION PENALTIES/987. Conduct involving dishonesty.

(2) CIVIL EVASION PENALTIES

987. Conduct involving dishonesty.

Where for the purpose of evading landfill tax¹, a registrable person² does any act or omits to take any action and his conduct³ involves dishonesty (whether or not it is such as to give rise to criminal liability), he is liable to a penalty equal to the amount of tax evaded, or (as the case may be) sought to be evaded⁴, by his conduct⁵. Where, by reason of conduct falling within this provision, a person is convicted of an offence⁶ that conduct does not also give rise to liability to a penalty under this provision⁷.

Statements made or documents produced by or on behalf of a person are not inadmissible in criminal proceedings in respect of any tax offence, or in any proceedings for the recovery of tax⁸, by reason only that it has been drawn to his attention:

- 317 (1) that, in relation to tax, the Commissioners for Her Majesty's Revenue and Customs⁹ may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no undertaking can be given as to whether the Commissioners will make such an assessment in the case of any person, it is their practice to be influenced by the fact that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for investigation¹⁰; and
- 318 (2) that the Commissioners or, on appeal, an appeal tribunal¹¹ have power¹² to reduce a penalty under this provision¹³,

and that he was or may have been induced thereby to make the statements or produce the documents¹⁴.

1 As to the meaning of 'landfill tax' see PARA 901. The reference in the Finance Act 1996 s 60, Sch 5 para 18(1)(a) to evading tax includes a reference to obtaining a payment under regulations as to credits (see PARA 938 et seq) in circumstances where the person concerned is not entitled to the sum: Sch 5 para 18(2).

2 As to the meaning of 'registrable person' see PARA 958 note 1.

3 'Conduct' includes any act, omission or statement: Finance Act 1996 s 70(1).

4 The reference in the Finance Act 1996 Sch 5 para 18(1) to the amount of tax evaded or sought to be evaded is a reference to the aggregate of: (1) the amount (if any) falsely claimed by way of credit (Sch 5 para 18(3)(a)); and (2) the amount (if any) by which the gross amount of tax was falsely understated (Sch 5 para 18(3)(b)).

'Credit' means credit for which provision is made by regulations under s 51 (see PARA 938 et seq): Sch 5 para 18(4)(a). 'Gross amount of tax' means the total amount of tax due before taking into account any deduction for which provision is made by regulations (see PARA 939): Sch 5 para 18(4)(b).

5 Finance Act 1996 Sch 5 para 18(1). The provisions of Sch 5 para 18 are repealed by the Finance Act 2008 s 122, Sch 40 para 21 as from 1 April 2009 in so far as they relate to conduct involving dishonesty which relates to an inaccuracy in a document or a failure to notify Her Majesty's Revenue and Customs ('HMRC') of an under-assessment by HMRC: Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009, SI 2009/571, art 6. As to the penalty for an inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC see the Finance Act 2007 s 97, Sch 24; and PARA 989.

- 6 Whether under the Finance Act 1996 Pt III (ss 39-71) or otherwise.
- 7 Finance Act 1996 Sch 5 para 18(7).
- 8 Finance Act 1996 Sch 5 para 18(6).
- 9 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 10 Finance Act 1996 Sch 5 para 18(5)(a).
- 11 As to the meaning of 'appeal tribunal' see PARA 1003 note 1.
- 12 Ie under the Finance Act 1996 Sch 5 para 25: see PARA 996.
- 13 Finance Act 1996 Sch 5 para 18(5)(b).
- 14 Finance Act 1996 Sch 5 para 18(5).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(2) CIVIL EVASION PENALTIES/988. Liability of named officer.

988. Liability of named officer.

Where it appears to the Commissioners for Her Majesty's Revenue and Customs¹ that a body corporate is liable to a penalty for tax evasion², and that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer³ of the body corporate (a 'named officer'), the Commissioners may serve a notice on the body corporate and on the named officer⁴. The notice must state the amount of the basic penalty⁵, and that the Commissioners propose to recover from the named officer such portion (which may be the whole) of the basic penalty as is specified in the notice⁶. Where such a notice is served, the portion of the basic penalty specified in the notice is recoverable from the named officer as if he were personally liable⁷ to a penalty which corresponds to that portion; and the amount of that penalty may be assessed and notified to him accordingly⁸.

Where such a notice is served, the amount which may be assessed⁹ as the amount due by way of penalty from the body corporate is to be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer, and the body corporate is treated as discharged from liability for so much of the basic penalty as is so assessed and notified¹⁰.

No appeal lies against such a notice as such but:

319 (1) where a body corporate is so assessed¹¹, the body corporate may appeal against the Commissioners' decision as to its liability to a penalty and as to the amount of the basic penalty as if it were specified in the assessment¹²;

320 (2) where an assessment is made on a named officer¹³, the named officer may appeal against the Commissioners' decision that the conduct of the body corporate is, in whole or in part, attributable to his dishonesty and of their decision as to the portion of the penalty which the Commissioners propose to recover from him¹⁴.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 I.e a penalty under the Finance Act 1996 s 60, Sch 5 para 18: see PARA 987.

3 'Managing officer', in relation to a body corporate, means any manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity or as a director: Finance Act 1996 Sch 5 para 19(6). Where the affairs of a body corporate are managed by its members, Sch 5 para 19 applies in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate: Sch 5 para 19(6).

4 Finance Act 1996 Sch 5 para 19(1).

The provisions of Sch 5 para 19 are repealed by the Finance Act 2008 s 122, Sch 40 para 21 as from 1 April 2009 in so far as they relate to conduct involving dishonesty which relates to an inaccuracy in a document or a failure to notify Her Majesty's Revenue and Customs ('HMRC') of an under-assessment by HMRC: Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009, SI 2009/571, art 6. As to the penalty for an inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC see the Finance Act 2007 s 97, Sch 24; and PARA 989.

5 Finance Act 1996 Sch 5 para 19(2)(a).

6 Finance Act 1996 Sch 5 para 19(2)(b).

7 I.e under the Finance Act 1996 Sch 5 para 18: see PARA 987.

8 Finance Act 1996 Sch 5 para 19(3).

9 le under the Finance Act 1996 Sch 5 para 32: see PARA 994.

10 Finance Act 1996 Sch 5 para 19(4).

11 le assessed as mentioned in Sch 5 para 19(4)(a).

12 Finance Act 1996 Sch 5 para 19(5)(a) (Sch 5 para 19(5) amended by SI 2009/56). The provisions of the Finance Act 1996 ss 54-56 (see PARAS 1003-1010) apply accordingly: Sch 5 para 19(5)(c) (as so amended).

13 le by virtue of the Finance Act 1996 Sch 5 para 19(3).

14 Finance Act 1996 Sch 5 para 19(5)(b) (as amended: see note 12). The provisions of the Finance Act 1996 ss 54-56 (see PARAS 1003-1010) apply accordingly: Sch 5 para 19(5)(c) (as so amended).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(3) OTHER CIVIL PENALTIES/989. Errors in documents and assessments.

(3) OTHER CIVIL PENALTIES

989. Errors in documents and assessments.

The cross-tax penalty for inaccuracies in documents and failure to notify Her Majesty's Revenue and Customs¹ of an under-assessment applies in relation to landfill tax and is discussed elsewhere in this work².

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 See the Finance Act 2007 s 97, Sch 24; and **INCOME TAXATION**.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(3) OTHER CIVIL PENALTIES/990. Failure to provide information or make records.

990. Failure to provide information or make records.

If a person:

- 321 (1) fails to comply with any provision with regard to the furnishing of information¹, or the production of documents²; or
- 322 (2) fails to make records as required by any provision of regulations³,

he is liable to a penalty⁴.

Where a penalty (an 'initial penalty') is so imposed on a person and the failure which led to the initial penalty continues after its imposition, he is liable to a further penalty for each day during which (or any part of which) the failure continues after the day on which the initial penalty was imposed⁵.

A person who fails to preserve records in compliance with any provision of regulations⁶ is liable to a penalty⁷.

1 le any provision of the Finance Act 1996 s 60, Sch 5 para 1: see PARA 970.

2 le any provision of the Finance Act 1996 Sch 5 para 3: see PARA 978.

3 le made under the Finance Act 1996 Sch 5 paras 2, 2A: see PARAS 931, 934.

4 Finance Act 1996 Sch 5 para 22(1). The penalty is a sum of £250: see Sch 5 para 22(1).

Where by reason of a failure falling within Sch 5 para 22(1) or Sch 5 para 22(3) (see the text and note 7): (1) a person is convicted of an offence (whether under Pt III (ss 39-71) or otherwise); or (2) a person is assessed to a penalty under Sch 5 para 18 (see PARA 987) or a penalty for a deliberate inaccuracy under the Finance Act 2007 Sch 24 (see PARA 989), that failure does not also give rise to liability to a penalty under the Finance Act 1996 Sch 5 para 22: Sch 5 para 22(4) (amended by SI 2009/571).

As from 1 April 2010, the Finance Act 1996 Sch 5 para 22(1)(a) (see head (1) in the text) is repealed: Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009, SI 2009/3054, art 3, Schedule para 7(b). Despite the repeal, the Finance Act 1996 Sch 5 para 22(1)(a) continues to have effect on and after 1 April 2010 where Her Majesty's Revenue and Customs requested information or documents before that day: Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009, SI 2009/3054, art 6.

5 Finance Act 1996 Sch 5 para 22(2). The further penalty is a sum of £20 for each such day: see Sch 5 para 22(2).

6 le made under the Finance Act 1996 Sch 5 para 2 (see PARA 931), read with Sch 5 para 2 and any direction given under the regulations.

7 Finance Act 1996 Sch 5 para 22(3). The penalty is a sum of £250: see Sch 5 para 22(3). See also note 4.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(3) OTHER CIVIL PENALTIES/991. Breach of regulations.

991. Breach of regulations.

Where regulations made under the landfill tax provisions¹ impose a requirement on any person, they may provide that if the person fails to comply with the requirement he is liable to a penalty².

1 I.e. the Finance Act 1996 Pt III (ss 39-71): see PARA 901 note 1.

2 Finance Act 1996 s 60, Sch 5 para 23(1). The penalty is a sum of £250: see Sch 5 para 23(1).

Where, by reason of any conduct: (1) a person is convicted of an offence (whether under the Finance Act 1996 Pt III or otherwise); or (2) a person is assessed to a penalty under Sch 5 para 18 (see PARA 987) or a penalty for a deliberate inaccuracy under the Finance Act 2007 Sch 24 (see PARA 989), that conduct does not also give rise to liability to a penalty under the regulations: Finance Act 1996 Sch 5 para 23(2) (amended by SI 2009/571). As to the meaning of 'conduct' see PARA 987 note 3.

The Finance Act 1996 Sch 5 para 23(1) does not apply to any failure mentioned in Sch 5 para 22 (see PARA 990): Sch 5 para 23(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(3) OTHER CIVIL PENALTIES/992. Breach of a controlled goods agreements.

992. Breach of a controlled goods agreements.

As from a day to be appointed¹ the following provisions apply where an enforcement agent² has entered into a controlled goods agreement³ with the person in default⁴.

If the person in default removes or disposes of goods (or permits their removal or disposal) in breach of the agreement, he is liable to a penalty equal to half of the tax or other amount recoverable⁵.

The person in default is not liable to a penalty if he satisfies the Commissioners for Her Majesty's Revenue and Customs⁶ or, on appeal, an appeal tribunal⁷, that there is a reasonable excuse for the breach in question⁸.

1 The Finance Act 1996 Sch 5 para 23A (added by the Tribunals, Courts and Enforcement Act 2007 s 62(3), Sch 13 para 123) is to be brought into force by order made under s 148(5) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Finance Act 1996 Sch 5 para 23A (as so added) is to be repealed by the Finance Act 2008 s 129, Sch 43 para 5. At the date at which this volume states the law no such day had been appointed.

2 Is an enforcement agent acting under the power conferred by the Finance Act 1997 s 51(A1) (not yet in force): Finance Act 1996 s 60, Sch 5 para 23A(1) (as added: see note 1). As to the Finance Act 1997 s 51 (enforcement by distress) see **DISTRESS** vol 13 (2007 Reissue) PARA 1127. As from a day to be appointed, s 51(A1) is to be repealed by the Finance Act 2008 s 129, Sch 43 para 6. At the date at which this volume states the law no such day had been appointed. As to the power, in force as from a day to be appointed, of the Commissioners for Her Majesty's Revenue and Customs to use the procedure in the Tribunals, Courts and Enforcement Act 2007 Sch 12 to take control of goods where a person does not pay a sum payable to the Commissioners see the Finance Act 2008 ss 127, 129; and **INCOME TAXATION**. As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 A 'controlled goods agreement' has the meaning conferred by the Tribunals, Courts and Enforcement Act 2007 Sch 12 para 13(4): see **CIVIL PROCEDURE** vol 12 (2009) PARA 1393.

4 Finance Act 1996 Sch 5 para 23A(1) (as added: see note 1). The 'person in default' means the person against whom the power conferred by the Finance Act 1997 s 51(A1) (not yet in force) (see note 2) is exercisable: Finance Act 1996 Sch 5 para 23A(1) (as so added).

5 Finance Act 1996 Sch 5 para 23A(3) (as added: see note 1).

6 See note 2.

7 As to the meaning of 'appeal tribunal' see PARA 1003 note 1.

8 Finance Act 1996 Sch 5 para 23A(4) (as added: see note 1).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(3) OTHER CIVIL PENALTIES/993. Breach of a walking possession agreement.

993. Breach of a walking possession agreement.

The following provisions apply where:

- 323 (1) in accordance with regulations¹ a distress is authorised to be levied on the goods and chattels of a person (a 'person in default') who has refused or neglected to pay any landfill tax² due from him or any amount recoverable as if it were tax due from him³; and
- 324 (2) the person levying the distress and the person in default have entered into a walking possession agreement⁴.

If the person in default is in breach of the undertaking contained in a walking possession agreement, he is liable to a penalty equal to half of the tax or other amount referred to in head (1) above⁵.

A walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default:

- 325 (1) acknowledges that the property specified in the agreement is under distraint and held in walking possession⁶; and
- 326 (2) undertakes that, except with the consent of the Commissioners for Her Majesty's Revenue and Customs and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement⁷.

¹ The regulations under the Finance Act 1997 s 51 (enforcement by distress: see **DISTRESS** vol 13 (2007 Reissue) PARA 1127): see the Finance Act 1996 s 60, Sch 5 para 24(1)(a). As to distress generally see **DISTRESS**.

² As to the meaning of 'landfill tax' see PARA 901.

³ Finance Act 1996 Sch 5 para 24(1)(a) (amended by the Finance Act 1997 s 53(8)). As from a day to be appointed, the Finance Act 1996 Sch 5 para 24(4) is substituted by the Tribunals, Courts and Enforcement Act 2007 s 62(3), Sch 13 para 124 so that the Finance Act 1996 Sch 5 para 24 extends only to Northern Ireland. At the date at which this volume states the law no such day had been appointed.

⁴ Finance Act 1996 Sch 5 para 24(1)(b).

⁵ Finance Act 1996 Sch 5 para 24(3).

⁶ Finance Act 1996 Sch 5 para 24(2)(a).

⁷ Finance Act 1996 Sch 5 para 24(2)(b). As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(4) ASSESSMENT OF PENALTIES AND MITIGATION/994. Assessments of penalties or interest.

(4) ASSESSMENT OF PENALTIES AND MITIGATION

994. Assessments of penalties or interest.

Where a person is liable to a penalty¹, or for interest², the Commissioners for Her Majesty's Revenue and Customs³ may, subject to the following provision, assess the amount due by way of penalty or interest (as the case may be) and notify it to him accordingly; and the fact that any conduct⁴ giving rise to a penalty may have ceased before an assessment is so made does not affect the power of the Commissioners to make such an assessment⁵. In the case of the penalties and interest referred to in heads (1) to (4) below, the assessment is to be of an amount due in respect of the accounting period⁶ which in the head concerned is referred to as the relevant period:

- 327 (1) in the case of a penalty relating to the evasion of landfill tax⁷, and in the case of interest⁸ on an amount due by way of such a penalty, the relevant period is the accounting period for which the tax evaded was due⁹;
- 328 (2) in the case of a penalty relating to the obtaining of a payment of credit under regulations¹⁰, and in the case of interest on an amount due by way of such a penalty, the relevant period is the accounting period in respect of which the payment was obtained¹¹;
- 329 (3) in the case of interest on underdeclared tax¹², and in the case of interest on an amount due by way of interest¹³, the relevant period is the accounting period in respect of which the tax was due¹⁴;
- 330 (4) in the case of interest on an amount of unpaid tax¹⁵, the relevant period is the accounting period in respect of which the tax was due¹⁶.

Where a person is assessed under these provisions to an amount due by way of any penalty or interest falling within heads (1) to (4) above and is also assessed to tax¹⁷ for the accounting period which is the relevant period, the assessments may be combined and notified to him as one assessment, but the amount of the penalty or interest must be separately identified in the notice¹⁸.

In a case where the amount of any penalty or interest falls to be calculated by reference to tax which was not paid at the time it should have been and that tax cannot be readily attributed to any one or more accounting periods, it is treated as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty or interest¹⁹.

In the case of an amount due by way of interest on unpaid tax²⁰:

- 331 (a) a notice of assessment must specify a date, being not later than the date of the notice, to which the amount of interest which is assessed is calculated²¹; and
- 332 (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made in respect of amounts which so accrue²².

Where an amount has been assessed and notified to any person under these provisions, it is recoverable as if it were tax due from him unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced²³.

- 1 le under the Finance Act 1996 s 60, Sch 5 Pt V paras 18-25: see PARA 987 et seq.
- 2 le under the Finance Act 1996 Sch 5 para 26 (see PARA 997) or Sch 5 para 27 (see PARA 998).
- 3 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 4 As to the meaning of 'conduct' see PARA 987 note 3.
- 5 Finance Act 1996 Sch 5 para 32(1). Section 50(8) (power to assess: see PARA 959) applies for the purposes of Sch 5 para 32 as it applies for the purposes of s 50 (see PARA 959): Sch 5 para 32(9).
- 6 As to the meaning of 'accounting period' see PARA 928 note 17.
- 7 le a penalty under the Finance Act 1996 Sch 5 para 18: see PARA 987.
- 8 le under the Finance Act 1996 Sch 5 para 27: see PARA 998.
- 9 Finance Act 1996 Sch 5 para 32(2)(a).
- 10 le a penalty under the Finance Act 1996 Sch 5 para 18: see PARA 987.
- 11 Finance Act 1996 Sch 5 para 32(2)(b).
- 12 le under the Finance Act 1996 Sch 5 para 26: see PARA 997.
- 13 le under the Finance Act 1996 Sch 5 para 27: see PARA 998.
- 14 Finance Act 1996 Sch 5 para 32(2)(c).
- 15 le under the Finance Act 1996 Sch 5 para 27 (see PARA 998): see Sch 5 para 32(2)(d).
- 16 Finance Act 1996 Sch 5 para 32(2)(d).
- 17 le the Finance Act 1996 s 50(1) or s 50(2) (see PARA 959).
- 18 Finance Act 1996 Sch 5 para 32(4).
- 19 Finance Act 1996 Sch 5 para 32(3).
- 20 le under the Finance Act 1996 Sch 5 para 27: see PARA 998.
- 21 Finance Act 1996 Sch 5 para 32(5), (6)(a). If, within such period as may be notified by the Commissioners to the person liable for the interest under Sch 5 para 27 (see PARA 998), the amount referred to in Sch 5 para 27(2), (4), (6), (8) or (10) (as the case may be) is paid, it is treated for the purposes of Sch 5 para 27 as paid on the date specified as mentioned in Sch 5 para 32(6)(a): Sch 5 para 32(7).
- 22 Finance Act 1996 Sch 5 para 32(5), (6)(b).
- 23 Finance Act 1996 Sch 5 para 32(8).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(4) ASSESSMENT OF PENALTIES AND MITIGATION/995. Time limits for assessments of penalty.

995. Time limits for assessments of penalty.

In general, an assessment of an amount due by way of penalty or interest¹ may not be made more than six years after the end of the accounting period concerned².

In the case of an assessment of an amount due by way of a penalty which is not one of certain specified penalties³, the assessment may not be made more than three years after the event giving rise to the penalty⁴. If tax has been lost: (1) as a result of conduct involving dishonesty⁵ or for which a person has been convicted of fraud; or (2) in circumstances giving rise to liability to a penalty for failure to register⁶, an assessment may be made as if, the reference to three years were a reference to 20 years⁷.

An assessment of: (a) an amount due by way of one of certain specified penalties⁸; or (b) an amount due by way of interest, may be made at any time before the expiry of the period of two years beginning with the time when the amount of landfill tax due for the accounting period concerned⁹ has been finally determined¹⁰.

Where after a person's death the Commissioners for Her Majesty's Revenue and Customs¹¹ propose to assess an amount as due by reason of some conduct¹² of the deceased, the assessment must not be made more than three years after the death¹³.

1 Ie an assessment under the Finance Act 1996 s 60, Sch 5 para 32: see PARA 994.

2 Finance Act 1996 Sch 5 para 33(1)(b) (Sch 5 para 33(1), (4) amended by the Finance Act 1997 s 50(1), Sch 5 Pt II para 6(2)(c)).

As from 1 April 2010, Sch 5 para 33(1), (3) is to be amended by, and Sch 5 para 33(1A) added by, the Finance Act 2009 s 99, Sch 51 para 40(2)-(4) so that an assessment may not in general be made more than four years after the end of the accounting period concerned or four years after the event giving rise to the penalty. As from 1 April 2010, the Finance Act 1996 Sch 5 para 33(4) is to be substituted by, and Sch 5 para 33(4A) added by, the Finance Act 2009 Sch 51 para 40(5) so that an assessment of an amount due from a person in a case involving a loss of tax brought about deliberately by that person (or by another person acting on his behalf) or attributable to a failure by the person to comply with an obligation under the Finance Act 1996 s 47(2), (3) (registration: see PARA 920) may be made at any time not more than 20 years after the end of the accounting period concerned or 20 years after the event giving rise to the penalty. The reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person: Sch 5 para 33(4A) (as so added).

3 The specified penalties are those referred to in the Finance Act 1996 Sch 5 para 32(2) (see PARA 994 heads (1)-(4)).

4 Finance Act 1996 Sch 5 para 33(1) (as amended: see note 2)

5 Ie conduct falling within the Finance Act 1996 Sch 5 para 18(1) (dishonest evasion: see PARA 987).

6 Ie a penalty under the Finance Act 1996 Sch 5 para 21 (failure to register: see PARA 920 note 4).

7 Finance Act 1996 Sch 5 para 33(4) (as amended: see note 2). Sch 5 para 33(4) is stated to be subject to Sch 5 para 33(5) (assessment after death: see the text to notes 11-13): Sch 5 para 33(4) (as so amended).

8 Ie any penalty referred to in the Finance Act 1996 Sch 5 para 32(2).

9 In relation to an assessment under the Finance Act 1996 Sch 5 para 32, any reference in Sch 5 para 33(1) or Sch 5 para 33(2) to the accounting period concerned is a reference to that period which, in the case of the penalty or interest concerned, is the relevant period referred to in Sch 5 para 32(2): Sch 5 para 33(3).

10 Finance Act 1996 Sch 5 para 33(2). Sch 5 para 33(2) is stated to be subject to Sch 5 para 33(5) (assessment after death: see the text to notes 11-13): Sch 5 para 33(2).

11 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

12 As to the meaning of 'conduct' see PARA 987 note 3.

13 Finance Act 1996 Sch 5 para 33(5)(a). If the circumstances are as set out in Sch 5 para 33(4) (see the text to note 7), the modification of Sch 5 para 33(1) contained in Sch 5 para 33(4) (see the text to note 7) does not apply but any assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within three years after it: Sch 5 para 33(5)(b).

As from 1 April 2010 Sch 5 para 33(5) is to be amended by the Finance Act 2009 Sch 51 para 40(6) so that an assessment must not be made more than four years after the death, and the Finance Act 1996 Sch 5 para 33(5) (b) is repealed.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/11. OFFENCES AND PENALTIES/(4) ASSESSMENT OF PENALTIES AND MITIGATION/996. Appeals against penalties.

996. Appeals against penalties.

Where a person is liable to a penalty¹ the Commissioners for Her Majesty's Revenue and Customs² or, on appeal, an appeal tribunal³ may reduce the penalty to such amount (including nil) as they think proper⁴. Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for any breach, failure or other conduct⁵, that is a factor which (among other things) may be taken into account⁶. In the case of a penalty so reduced by the Commissioners, on an appeal relating to the penalty the appeal tribunal may cancel the whole or any part of the reduction made by the Commissioners⁷.

1 le under the Finance Act 1996 s 60, Sch 5 Pt V paras 18-25.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 As to the meaning of 'appeal tribunal' see PARA 1003 note 1.

4 Finance Act 1996 Sch 5 para 25(1).

5 As to the meaning of 'conduct' see PARA 987 note 3.

6 Finance Act 1996 Sch 5 para 25(2).

7 Finance Act 1996 Sch 5 para 25(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/12. INTEREST/(1) INTEREST PAID BY THE TAXPAYER/997. Interest on underdeclared tax.

12. INTEREST

(1) INTEREST PAID BY THE TAXPAYER

997. Interest on underdeclared tax.

Where:

- 333 (1) the Commissioners for Her Majesty's Revenue and Customs¹ assess² an amount of landfill tax³ due from a registrable person⁴ for an accounting period⁵ and notify it to him⁶; and
- 334 (2) the assessment is made on the basis that the amount (the 'additional amount') is due from him in addition to any amount shown in a return made in relation to the accounting period⁷,

then the additional amount is to carry interest for the period which:

- 335 (a) begins with the day after that on which the person is required⁸ to pay tax due from him for the accounting period⁹; and
- 336 (b) ends with the day before the relevant day¹⁰. The 'relevant day' is the earlier of the day on which the assessment is notified to the person and the day on which the additional amount is paid¹¹.

Where the Commissioners assess¹² an amount, which has been paid as a credit which is not due, as being tax due from a registrable person for an accounting period and notify it to him¹³, the amount must carry interest for the period which:

- 337 (i) begins with the day after that on which the person is required¹⁴ to pay tax due from him for the accounting period¹⁵; and
- 338 (ii) ends with the day before the relevant day¹⁶. The 'relevant day' is the earlier of the day on which the assessment is notified to the person and the day on which the amount is paid¹⁷.

Interest under the above provisions is payable at the applicable rate¹⁸ and must be paid without any deduction of income tax¹⁹.

Where an amount would normally carry interest under the above provisions²⁰, and all or part of the amount turns out not to be due²¹, then:

- 339 (A) the amount or part (as the case may be) does not carry interest under this provision and is treated as never having done so²²; and
- 340 (B) all such adjustments as are reasonable are to be made, including adjustments by way of repayment by the Commissioners where appropriate²³.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 le under the Finance Act 1996 s 50(1): see PARA 959.

- 3 As to the meaning of 'landfill tax' see PARA 901.
- 4 As to the meaning of 'registrable person' see PARA 958 note 1.
- 5 As to the meaning of 'accounting period' see PARA 928 note 17.
- 6 Finance Act 1996 s 60, Sch 5 para 26(1)(a).
- 7 Finance Act 1996 Sch 5 para 26(1)(b).
- 8 le by provision made under the Finance Act 1996 s 49: see PARA 935.
- 9 Finance Act 1996 Sch 5 para 26(2)(a).
- 10 Finance Act 1996 Sch 5 para 26(2)(b).
- 11 Finance Act 1996 Sch 5 para 26(3).
- 12 le under the Finance Act 1996 s 50(2): see PARA 959.
- 13 Finance Act 1996 Sch 5 para 26(4).
- 14 le by provision made under the Finance Act 1996 s 49: see PARA 935.
- 15 Finance Act 1996 Sch 5 para 26(5)(a).
- 16 Finance Act 1996 Sch 5 para 26(5)(b).
- 17 Finance Act 1996 Sch 5 para 26(6).
- 18 Finance Act 1996 Sch 5 para 26(7). The applicable rate is the rate provided for by regulations made by the Treasury under s 197: see PARA 1001 note 3. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 19 Finance Act 1996 Sch 5 para 26(8).
- 20 Finance Act 1996 Sch 5 para 26(9)(a).
- 21 Finance Act 1996 Sch 5 para 26(9)(b).
- 22 Finance Act 1996 Sch 5 para 26(10)(a).
- 23 Finance Act 1996 Sch 5 para 26(10)(b).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/12. INTEREST/(1) INTEREST PAID BY THE TAXPAYER/998. Interest on unpaid tax and assessments.

998. Interest on unpaid tax and assessments.

Where a registrable person¹ makes a return² (whether or not he makes it at the time required)³, and the return shows that an amount of landfill tax⁴ is due from him for the accounting period⁵ in relation to which the return is made⁶, then the amount carries interest for the period which begins with the day after that on which the person is required⁷ to pay tax due from him for the accounting period⁸, and ends with the day before that on which the amount is paid⁹.

Where the Commissioners for Her Majesty's Revenue and Customs¹⁰ assess an amount of tax due from a registrable person for an accounting period in respect of failure to make or verify returns¹¹ and notify it to him¹², and the assessment is made on the basis that no return has been made by the person in relation to the accounting period¹³, then the amount carries interest for the period which begins with the day after that on which the person is required to pay tax due from him for the accounting period¹⁴, and ends with the day before that on which the amount is paid¹⁵.

Where the Commissioners assess an amount of tax due from a registrable person for an accounting period in respect of failure to make or verify returns¹⁶ and notify it to him¹⁷, and the assessment (the 'supplementary assessment') is made on the basis that the amount (the 'additional amount') is due from him in addition to any amount shown in a return, or in any previous assessment, made in relation to the accounting period¹⁸, then the additional amount carries interest for the period which begins with the day on which the supplementary assessment is notified to the person¹⁹, and ends with the day before that on which the additional amount is paid²⁰.

Where the Commissioners assess an amount as being tax due from a registrable person for an accounting period in respect of credit to which he was not entitled²¹ and notify it to him²², the amount carries interest for the period which begins with the day on which the assessment is notified to the person²³, and ends with the day before that on which the amount is paid²⁴.

Where the Commissioners assess an amount due from a person by way of penalty²⁵ and notify it to him²⁶, or assess an amount due from a person by way of interest²⁷ and notify it to him²⁸, the amount carries interest for the period which begins with the day on which the assessment is notified to the person²⁹, and ends with the day before that on which the amount is paid³⁰.

Interest under the above provisions is to be compound interest calculated at the penalty rate³¹ and with monthly rests³² and is paid without any deduction of income tax³³. The penalty rate is the rate found by taking the rate at which interest is payable³⁴ and adding ten percentage points to that rate³⁵.

Where an amount would normally carry interest under the above provisions, and all or part of the amount turns out not to be due, then that amount or part (as the case may be) does not carry interest under this provision and is treated as never having done so³⁶, and all such adjustments as are reasonable must be made, including adjustments by way of repayment by the Commissioners where appropriate³⁷.

1 As to the meaning of 'registrable person' see PARA 958 note 1.

2 I.e. under provision made under the Finance Act 1996 s 49: see PARA 935.

3 Finance Act 1996 s 60, Sch 5 para 27(1)(a).

4 As to the meaning of 'landfill tax' see PARA 901.

- 5 As to the meaning of 'accounting period' see PARA 928 note 17.
- 6 Finance Act 1996 Sch 5 para 27(1)(b).
- 7 See note 2.
- 8 Finance Act 1996 Sch 5 para 27(2)(a). As to the suspension of interest under Sch 5 para 27(2) during the currency of an agreement for deferred payment see the Finance Act 2009 s 108; and **INCOME TAXATION**.
- 9 Finance Act 1996 Sch 5 para 27(2)(b).
- 10 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.
- 11 Is an assessment under the Finance Act 1996 s 50(1): see PARA 959.
- 12 Finance Act 1996 Sch 5 para 27(3)(a).
- 13 Finance Act 1996 Sch 5 para 27(3)(b).
- 14 Finance Act 1996 Sch 5 para 27(4)(a).
- 15 Finance Act 1996 Sch 5 para 27(4)(b).
- 16 Is an assessment under the Finance Act 1996 s 50(1): see PARA 959.
- 17 Finance Act 1996 Sch 5 para 27(5)(a).
- 18 Finance Act 1996 Sch 5 para 27(5)(b).
- 19 Finance Act 1996 Sch 5 para 27(6)(a).
- 20 Finance Act 1996 Sch 5 para 27(6)(b). Where: (1) the Commissioners assess and notify an amount as mentioned in Sch 5 para 27(5)(a) or Sch 5 para 27(7) or Sch 5 para 27(9)(a) or (b); (2) they also specify a date for this purpose; and (3) the amount concerned is paid on or before that date, then the amount does not carry interest by virtue of Sch 5 para 27(6), (8) or (10) (as the case may be): Sch 5 para 27(13).
- 21 Is an assessment under the Finance Act 1996 s 50(2): see PARA 959.
- 22 Finance Act 1996 Sch 5 para 27(7). See also note 20.
- 23 Finance Act 1996 Sch 5 para 27(8)(a).
- 24 Finance Act 1996 Sch 5 para 27(8)(b).
- 25 Is under the Finance Act 1996 Sch 5 para 32: see PARA 994.
- 26 Finance Act 1996 Sch 5 para 27(9)(a). See also note 20.
- 27 Is under the Finance Act 1996 Sch 5 para 26: see PARA 997.
- 28 Finance Act 1996 Sch 5 para 27(9)(b). See also note 20.
- 29 Finance Act 1996 Sch 5 para 27(10)(a).
- 30 Finance Act 1996 Sch 5 para 27(10)(b).
- 31 Finance Act 1996 Sch 5 para 27(11)(a).
- 32 Finance Act 1996 Sch 5 para 27(11)(b).
- 33 Finance Act 1996 Sch 5 para 27(12).
- 34 Is under the Finance Act 1996 Sch 5 para 26 (see PARA 997).
- 35 Finance Act 1996 Sch 5 para 27(11).
- 36 Finance Act 1996 Sch 5 para 27(14), (15)(a).

37 Finance Act 1996 Sch 5 para 27(14), (15)(b).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/12. INTEREST/(1) INTEREST PAID BY THE TAXPAYER/999. Appeal against interest.

999. Appeal against interest.

Where a person is liable to pay interest¹ the Commissioners for Her Majesty's Revenue and Customs² or, on appeal, an appeal tribunal³ may reduce the amount payable to such amount (including nil) as they think proper⁴. Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay interest, that is a factor which (among other things) may be taken into account⁵.

In the case of interest reduced by the Commissioners⁶, on an appeal relating to the interest, the appeal tribunal may cancel the whole or any part of the reduction made by the Commissioners⁷.

1 le interest on unpaid tax or assessments: see PARA 998.

2 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

3 As to the meaning of 'appeal tribunal' see PARA 1003 note 1.

4 Finance Act 1996 s 60, Sch 5 para 28(1).

5 Finance Act 1996 Sch 5 para 28(2). See *Caird Environmental v Customs and Excise Comrs* (29 April 1999, unreported) (where the tribunal found on the balance of probabilities that the taxpayer's cheque had not been submitted with its landfill tax return; it did not therefore have a reasonable excuse).

6 le under the Finance Act 1996 Sch 5 para 27(1): see PARA 998.

7 Finance Act 1996 Sch 5 para 28(3).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/12. INTEREST/(2) INTEREST PAYABLE BY COMMISSIONERS FOR REVENUE AND CUSTOMS/1000. Interest payable due to error by Commissioners for Revenue and Customs.

(2) INTEREST PAYABLE BY COMMISSIONERS FOR REVENUE AND CUSTOMS

1000. Interest payable due to error by Commissioners for Revenue and Customs.

Where, due to an error on the part of the Commissioners for Her Majesty's Revenue and Customs¹, a person:

- 341 (1) has paid to them by way of landfill tax² an amount which was not tax due and which they are in consequence liable to repay to him³;
- 342 (2) has failed to claim payment of an amount of credit to the payment of which he was entitled⁴; or
- 343 (3) has suffered delay in receiving payment of an amount⁵ due to him from them in connection with tax⁶,

then, if and to the extent that they would not be liable to do so apart from these provisions, they must pay interest to him on that amount for the applicable period⁷ at the applicable rate⁸.

The applicable period, in a case falling within head (1) above, is the period beginning with the date on which the payment is received by the Commissioners, and ending with the date on which they authorise payment of the amount on which the interest is payable⁹. The applicable period, in a case falling within head (2) or head (3) above, is the period beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and ending with the date on which they in fact authorise payment of that amount¹⁰. In determining the applicable period there must be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by the conduct¹¹ of the person claiming interest¹².

This reference to a period by which the Commissioners' authorisation of the payment of interest is delayed by the conduct of the person who claims it includes, in particular, any period which is referable to:

- 344 (a) any unreasonable delay in the making of the claim or in the making of any claim for the payment or repayment of the amount on which interest is claimed¹³;
- 345 (b) any failure by that person or a person acting on his behalf or under his influence to provide the Commissioners, at or before the time of making the claim or subsequently in response to a request for information by the Commissioners with all the information required by them to enable the existence and amount of the claimant's entitlement to payment or repayment, to be determined¹⁴; and
- 346 (c) the making, as part of or in association with either the claim for interest or any claim for the payment or repayment of the amount on which interest is claimed, of a claim to anything to which the claimant was not entitled¹⁵.

In determining for these purposes whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there is taken to be so referable, except so far as may be provided by regulations, any period which:

- 347 (i) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined¹⁶; and
- 348 (ii) ends with the earliest date on which it would be reasonable for the Commissioners to conclude:
- 29
50. (A) that they have received a complete answer to their request for information¹⁷;
51. (B) that they have received all that they need in answer to that request¹⁸;
52. (C) that it is unnecessary for them to be provided with any information in answer to that request¹⁹.
- 30

The Commissioners are only liable to pay interest under these provisions on a claim made in writing for that purpose²⁰. Such a claim must not be made more than three years after the end of the applicable period to which it relates²¹.

Where interest is payable by the Commissioners to a person entitled to credit under the relevant regulations²², the interest is treated as an amount to which he is entitled by way of credit²³.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 As to the meaning of 'landfill tax' see PARA 901.

3 Finance Act 1996 s 60, Sch 5 para 29(1)(a). This reference to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied: Sch 5 para 29(1A)(a) (Sch 5 para 29(1A) added by the Finance Act 1997 s 50, Sch 5 Pt III para 11).

References in the Finance Act 1996 Sch 5 para 29 to receiving payment of any amount from the Commissioners, or the authorisation by the Commissioners of the payment of any amount, include references to the discharge by way of set-off (whether in accordance with regulations (see PARAS 963-964) or otherwise) of the Commissioners' liability to pay that amount: Sch 5 para 29(9) (substituted by the Finance Act 1997 Sch 5 Pt III para 11).

4 Finance Act 1996 Sch 5 para 29(1)(b). As to payments of credit see the regulations made under s 51; and PARA 938 et seq.

5 This does not include any amount of interest payable under the Finance Act 1996 Sch 5 para 29: Sch 5 para 29(1A)(b) (as added: see note 3).

6 Finance Act 1996 Sch 5 para 29(1)(c).

7 Finance Act 1996 Sch 5 para 29(1).

8 Finance Act 1996 Sch 5 para 29(10). The applicable rate is the rate provided for by regulations made by the Treasury under s 197: see PARA 1001 note 3. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

9 Finance Act 1996 Sch 5 para 29(2).

10 Finance Act 1996 Sch 5 para 29(3).

11 As to the meaning of 'conduct' see PARA note 3.

12 Finance Act 1996 Sch 5 para 29(4) (substituted by the Finance Act 1997 Sch 5 Pt III para 12).

13 Finance Act 1996 Sch 5 para 29(4A)(a) (Sch 5 para 29(4A) added by the Finance Act 1997 Sch 5 Pt III para 12).

14 Finance Act 1996 Sch 5 para 29(4A)(b) (as added: see note 13).

15 Finance Act 1996 Sch 5 para 29(4A)(c) (as added: see note 13).

16 Finance Act 1996 Sch 5 para 29(5)(a) (Sch 5 para 29(5) substituted by the Finance Act 1997 Sch 5 Pt III para 12). At the date at which this volume states the law no regulations had been made under the Finance Act 1996 Sch 5 para 29(5).

17 Finance Act 1996 Sch 5 para 29(5)(b)(i) (as substituted: see note 16).

18 Finance Act 1996 Sch 5 para 29(5)(b)(ii) (as substituted: see note 16).

19 Finance Act 1996 Sch 5 para 29(5)(b)(iii) (as substituted: see note 16).

20 Finance Act 1996 Sch 5 para 29(7).

21 Finance Act 1996 Sch 5 para 29(8) (substituted by the Finance Act 1997 Sch 5 Pt III para 11). As from 1 April 2010 the Finance Act 1996 Sch 5 para 29(8) is to be amended by the Finance Act 2009 s 99, Sch 51 para 39 so that a claim must not be made more than four years after the end of the applicable period to which it relates.

22 See PARA 938 et seq.

23 Finance Act 1996 Sch 5 para 30(1). Schedule 5 para 30(1) is disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled: Sch 5 para 30(2).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/12. INTEREST/(3) RATES OF INTEREST/1001. Rate of interest payable to or by Commissioners for Revenue and Customs.

(3) RATES OF INTEREST

1001. Rate of interest payable to or by Commissioners for Revenue and Customs.

The rate of interest applicable for the purposes of the provisions as to interest payable to or by the Commissioners for Her Majesty's Revenue and Customs¹ in connection with landfill tax² is the rate provided for by regulations³ made by the Treasury⁴.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 I.e. the Finance Act 1996 s 60, Sch 5 paras 26, 29: see PARAS 997, 1000. As to the meaning of 'landfill tax' see PARA 901.

3 Regulations may:

- 88 (1) make different provision for different enactments or for different purposes of the same enactment (Finance Act 1996 s 197(3)(a));
- 89 (2) either themselves specify a rate of interest for the purposes of an enactment or make provision for any such rate to be determined, and to change from time to time, by reference to such rate or the average of such rates as may be referred to in the regulations (s 197(3)(b));
- 90 (3) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae (s 197(3)(c));
- 91 (4) provide for rates arrived at by reference to averages or formulae to be rounded up or down (s 197(3)(d));
- 92 (5) provide for circumstances in which changes of rates of interest are or are not to take place (s 197(3)(e)); and
- 93 (6) provide that changes of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day (s 197(3)(f)).

The power to make regulations under this provision is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 197(4).

4 Finance Act 1996 s 197(1). The following rates are prescribed under s 197(1):

- 94 (1) 8.5% in respect of interest on undeclared tax under Sch 5 para 26 (see PARA 997) and of interest on unpaid tax found on appeal to be due under s 56(5) (see PARA 1005) (see the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 4(1) (substituted by SI 2000/631; and amended by SI 2001/3337; and SI 2009/56));
- 95 (2) 5% in respect of interest payable by the Commissioners under the Finance Act 1996 Sch 5 para 29 (see PARA 1000); interest on tax found on appeal not to be payable under s 56(3) (see PARA 1005) and interest on an amount due to an appellant found on appeal not to have been paid under s 56(4) (see PARA 1005) (see the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998, SI 1998/1461, reg 5(1) (substituted by SI 2000/631; and amended by SI 2001/3337; and SI 2009/56)).

The regulations make provision for changes in the applicable interest rate and for the formula to be used in calculating the new rate: see the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1997, SI 1998/1461, regs 4(2), (3), 5(2), (3) (substituted by SI 2000/631). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/13. SECURITY FOR TAX/1002. Security for tax.

13. SECURITY FOR TAX

1002. Security for tax.

Where it appears to the Commissioners for Her Majesty's Revenue and Customs¹ requisite to do so for the protection of the revenue they may require a registrable person², as a condition of his carrying out taxable activities³, to give security (or further security) of such amount and in such manner as they may determine for the payment of any landfill tax⁴ which is or may become due from him⁵.

1 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

2 As to the meaning of 'registrable person' see PARA 958 note 1.

3 As to the meaning of 'taxable activity' see PARA 920 note 1.

4 As to the meaning of 'landfill tax' see PARA 901.

5 Finance Act 1996 s 60, Sch 5 para 31.

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/14. APPEALS AND REVIEWS/(1) APPEALS/1003. Appeals in general.

14. APPEALS AND REVIEWS

(1) APPEALS

1003. Appeals in general.

An appeal lies to an appeal tribunal¹ from any person who is or will be affected by any of the following decisions:

- 349 (1) a decision as to the registration or cancellation of registration of any person under the landfill tax provisions²;
- 350 (2) a decision as to whether tax is chargeable in respect of a disposal or as to how much tax is chargeable³;
- 351 (3) a decision to refuse an application for a reclamation certificate⁴ made before 1 December 2008, or to withdraw such a certificate⁵;
- 352 (4) a decision to make such a certificate subject to a condition that it is to be in force in relation to part only of the land to which the application for the certificate related⁶;
- 353 (5) a decision as to whether a person is entitled to credit⁷ or as to how much credit a person is entitled to or as to the manner in which he is to benefit from credit⁸;
- 354 (6) a decision to withdraw approval of an environmental body under the provisions on credits for payments to bodies concerned with the environment⁹;
- 355 (7) a decision as to an assessment¹⁰ or as to the amount of an assessment¹¹;
- 356 (8) a decision to refuse a request¹² by a body corporate for registration of its divisions¹³;
- 357 (9) a decision to refuse an application¹⁴ by bodies corporate to be treated as members of a group¹⁵;
- 358 (10) a decision as to whether conditions set out in a specification by the Commissioners for Her Majesty's Revenue and Customs¹⁶ as weight of material disposed of¹⁷ are met in relation to a disposal¹⁸;
- 359 (11) a decision to give a direction¹⁹ that agreed rules as to determining weight are no longer to have effect²⁰;
- 360 (12) a decision as to a claim²¹ for the repayment of overpaid tax²²;
- 361 (13) a decision as to liability to a penalty²³ or as to the amount of such a penalty²⁴;
- 362 (14) a decision as to liability of a body corporate to a penalty²⁵ for tax evasion²⁶;
- 363 (15) a decision as to any liability to pay interest on underdeclared or unpaid tax²⁷ or as to the amount of the interest payable²⁸;
- 364 (16) a decision as to any liability of the Commissioners to pay interest²⁹ or as to the amount of the interest payable³⁰;
- 365 (17) a decision to require any security³¹ or as to its amount³²;
- 366 (18) a decision as to the amount of any penalty or interest specified³³ in an assessment³⁴;
- 367 (19) a decision of the Commissioners under the provisions on secondary liability of controllers of landfill sites³⁵.

1 'Appeal tribunal' means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: Finance Act 1996 s 70(1) (amended by SI 2009/56). As to the First-tier and Upper Tribunals see **ADMINISTRATIVE LAW**. As to Tribunal Procedure Rules see **ADMINISTRATIVE LAW**.

2 Finance Act 1996 s 54(1)(a).

3 Finance Act 1996 s 54(1)(b).

4 le a certificate under the Finance Act 1996 s 43B: see PARA 913.

5 Finance Act 1996 s 54(1)(ba) (s 54(1)(ba), (bb) added by SI 1996/1529). The Finance Act 1996 s 54(1)(ba) is to be repealed with effect from 1 April 2012: Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008, SI 2008/2669, arts 3, 4.

6 Finance Act 1996 s 54(1)(bb) (as added: see note 5). Section 54(1)(bb) applies only in relation to applications made before 1 December 2008 and is to be repealed with effect from 1 April 2012: Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008, SI 2008/2669, art 3.

7 As to credit see PARA 938 et seq.

8 Finance Act 1996 s 54(1)(c).

9 Finance Act 1996 s 54(1)(ca) (s 54(1)(ca) added by the Finance Act 2008 s 151(1)(3)). As to credits for payments to bodies concerned with the environment see PARA 949 et seq.

10 le an assessment under the Finance Act 1996 s 50 (see PARA 959) in respect of an accounting period in relation to which a return required to be made by virtue of regulations under s 49 (see PARA 935) has been made: s 54(2). As to the meaning of 'accounting period' see PARA 928 note 17.

11 Finance Act 1996 s 54(1)(d).

12 le under the Finance Act 1996 s 58(3): see PARA 924.

13 Finance Act 1996 s 54(1)(e).

14 le under the Finance Act 1996 s 59: see PARA 925.

15 Finance Act 1996 s 54(1)(f).

16 As to the Commissioners for Her Majesty's Revenue and Customs see PARA 901 note 2.

17 le under the Landfill Tax Regulations 1996, SI 1996/1527, reg 43(3): see PARA 909.

18 Finance Act 1996 s 54(1)(g).

19 le under the Landfill Tax Regulations 1996, SI 1996/1527, reg 44(3): see PARA 910.

20 Finance Act 1996 s 54(1)(h).

21 le under the Finance Act 1996 s 60, Sch 5 para 14: see PARA 966.

22 Finance Act 1996 s 54(1)(i).

23 le under the Finance Act 1996 Sch 5 Pt V paras 18-25: see PARA 987 et seq.

24 Finance Act 1996 s 54(1)(j).

25 le under the Finance Act 1996 Sch 5 para 19 (as mentioned in Sch 5 para 19(5)): see PARA 988.

26 Finance Act 1996 s 54(1)(k).

27 le under the Finance Act 1996 Sch 5 para 26 or Sch 5 para 27: see PARAS 997-998.

28 Finance Act 1996 s 54(1)(l).

29 le under the Finance Act 1996 Sch 5 para 29: see PARA 1000.

30 Finance Act 1996 s 54(1)(m).

31 le under the Finance Act 1996 Sch 5 para 31 (see PARA 1002): see s 54(1)(n).

32 Finance Act 1996 s 54(1)(n).

33 le under the Finance Act 1996 Sch 5 para 32: see PARA 994.

34 Finance Act 1996 s 54(1)(o).

35 The provisions are those under the Finance Act 1996 Sch 5 Pt VIII paras 48-61: see PARA 930. Section 54 applies to a decision of the Commissioners under Sch 5 Pt VIII: (1) that a person is a controller; (2) that a person is liable under Sch 5 Pt VIII to pay any amount (including a penalty under Sch 5 para 60 (see PARA 930)); (3) that a person is not entitled under Sch 5 Pt VIII to an allowance; or (4) as to the amount of any liability or any allowance under Sch 5 Pt VIII as it applies to the other decisions of the Commissioners specified in s 54(1): Sch 5 para 59 (added by the Finance Act 2000 s 142, Sch 37).

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1004. Bringing of appeals.

An appeal¹ must be made to the appeal tribunal² before the later of the end of the relevant period³ or the end of the period of 30 days beginning with:

- 368 (1) in a case where the person (P) to whom the decision has been notified is the appellant, the date of the document notifying the decision to which the appeal relates; or
- 369 (2) in a case where a person other than P is the appellant, the date that person becomes aware of the decision⁴.

In a case where Her Majesty's Revenue and Customs ('HMRC') are required to undertake a review⁵, an appeal may not be made until the conclusion date⁶ and any appeal must be made within the period of 30 days beginning with the conclusion date⁷.

In a case where HMRC are requested to undertake a review⁸, an appeal may not be made unless HMRC have decided whether or not to undertake a review, and, if they decide to undertake a review, until the conclusion date⁹. Any appeal must be made within the period of thirty days beginning with the conclusion date or the date on which HMRC decide not to undertake a review¹⁰.

In a case where HMRC are required to undertake a review but do not give notice of the conclusions within the specified time period¹¹, an appeal may be made at any time from the end of the specified time period to the date 30 days after the conclusion date¹².

An appeal may be made after the end of any of the above periods only if the appeal tribunal gives permission to do so¹³.

1 le under the Finance Act 1996 s 54: see PARA 1003.

2 As to the appeal tribunal see PARA 1003 note 1.

3 As to the meaning of 'relevant period' see PARA 1008 note 3.

4 Finance Act 1996 s 54G(1) (s 54G added by SI 2009/56).

5 le under the Finance Act 1996 s 54C: see PARA 1007.

6 The 'conclusion date' is the date of the document notifying the conclusions of the review: Finance Act 1996 s 54G(7) (as added: see note 4). See PARA 1010.

7 Finance Act 1996 s 54G(3) (as added: see note 4).

8 le under the Finance Act 1996 s 54E: see PARA 1009.

9 Finance Act 1996 s 54G(4)(a) (as added: see note 4).

10 Finance Act 1996 s 54G(4)(b) (as added: see note 4).

11 le the time period specified in the Finance Act 1996 s 54F(6): see PARA 1010.

12 Finance Act 1996 s 54G(5) (as added: see note 4).

13 Finance Act 1996 s 54G(6) (as added: see note 4).

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1005. Further provisions relating to appeals.

Where an appeal is made with respect to a decision as to tax chargeable or an assessment¹ the appeal is not to be entertained unless the amount which Her Majesty's Revenue and Customs ('HMRC') have determined to be payable as tax has been paid or deposited with them².

Where the amount determined has not been paid or deposited an appeal may nevertheless be entertained if HMRC are satisfied (on the application of the appellant) or the appeal tribunal³ decides (HMRC not being so satisfied and on the application of the appellant) that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship⁴.

Where on an appeal⁵:

- 370 (1) it is found that the amount specified in the assessment is less than it ought to have been⁶; and
- 371 (2) the appeal tribunal gives a direction specifying the correct amount⁷,

the assessment has effect as an assessment of the amount specified in the direction and that amount is deemed to have been notified to the appellant⁸.

Where on an appeal⁹ it is found that the whole or part of any amount paid or deposited¹⁰ is not due, so much of that amount as is found not to be due must be repaid with interest at the applicable rate¹¹. Where on an appeal it is found that the whole or part of any amount due to the appellant as credit¹² has not been paid, so much of that amount as is found not to have been paid must be paid with interest at the applicable rate¹³.

Where an appeal has been entertained notwithstanding that an amount determined by the Commissioners to be payable as tax has not been paid or deposited and it is found on the appeal that that amount is due, it is to be paid with interest at the applicable rate¹⁴. Interest is paid without any deduction of income tax¹⁵.

1 le a decision falling within the Finance Act 1996 s 54(1)(b) or s 54(1)(d): see PARA 1003.

2 Finance Act 1996 s 55(3) (substituted by SI 2009/56). Without prejudice to the Finance Act 1996 s 60, Sch 5 para 25 (see PARA 996), nothing in s 55 is to be taken to confer on a tribunal any power to vary an amount assessed by way of penalty except in so far as it is necessary to reduce it to the amount which is appropriate under Sch 5 paras 18-24 (see PARA 987 et seq): s 56(6). Without prejudice to Sch 5 para 28 (see PARA 999), nothing in s 55 is taken to confer on a tribunal any power to vary an amount assessed by way of interest except in so far as it is necessary to reduce it to the amount which is appropriate under Sch 5 para 26 or Sch 5 para 27 (see PARAS 997, 998): s 56(7).

On an appeal under s 55 against an assessment to a penalty for evasion under Sch 5 para 18 (see PARA 987), the burden of proof as to the matters specified in Sch 5 para 18(1)(a), (b) lies upon the Commissioners: s 55(4).

3 As to the meaning of 'appeal tribunal' see PARA 1003 note 1.

4 Finance Act 1996 s 55(3A) (s 55(3A), (3B) added by SI 2009/56). The decision of the tribunal as to the issue of hardship is final, notwithstanding the provisions of the Tribunals, Courts and Enforcement Act 2007 s 11 and s 13 (see **ADMINISTRATIVE LAW**) (right of appeal to the Upper Tribunal and to the Court of Appeal etc): Finance Act 1996 s 55(3B) (as so added).

5 le under the Finance Act 1996 s 54: see PARA 1003.

6 Finance Act 1996 s 56(2)(a) (s 56(2) amended by SI 2009/56).

- 7 Finance Act 1996 s 56(2)(b) (as amended: see note 6).
- 8 Finance Act 1996 s 56(2) (as amended: see note 6).
- 9 le under the Finance Act 1996 s 55: see the text and notes 2, 3.
- 10 le in pursuance of the Finance Act 1996 s 55(3): see the text and note 2.
- 11 Finance Act 1996 s 56(3) (amended by SI 2009/56). The applicable rate is the rate applicable under the Finance Act 1996 s 197: see PARA 1001.
- 12 As to credit see PARA 938 et seq.
- 13 Finance Act 1996 s 56(4) (amended by SI 2009/56). As to the applicable rate see note 12.
- 14 Finance Act 1996 s 56(5) (amended by SI 2009/56). As to the applicable rate see note 11. The Value Added Tax Act 1994 ss 85, 85B (settling of appeals by agreement and payment of tax where there is a further appeal: see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 348, 369) have effect as if: (1) the references to s 83 included references to the Finance Act 1996 s 54 (s 56(8)(a) (s 56(8) substituted by SI 2009/56)); and (2) the references to value added tax included references to landfill tax (Finance Act 1996 s 56(8)(b) (as so substituted)).
- 15 Finance Act 1996 s 56(5A) (added by SI 2009/56).

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(2) REVIEWS

1006. Offer of and right to require review.

Her Majesty's Revenue and Customs ('HMRC') must offer a person (P) a review¹ of a decision that has been notified to a person if an appeal² lies in respect of the decision³. The offer must be made by notice given to P at the same time as the decision is notified to P⁴.

Any person other than P who has the right of appeal⁵ against a decision may require HMRC to review that decision if that person has not appealed⁶ to the appeal tribunal⁷. A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision⁸.

1 As to the nature of a review see PARA 1010.

2 Ie under the Finance Act 1996 s 54: see PARA 1003.

3 Finance Act 1996 s 54A(1) (s 54A added by SI 2009/56). The Finance Act 1996 s 54A does not apply to the notification of the conclusions of a review (see PARA 1010): s 54A(3) (as so added).

4 Finance Act 1996 s 54A(2) (as added: see note 3).

5 Ie under the Finance Act 1996 s 54: see PARA 1003.

6 Ie under the Finance Act 1996 s 54G: see PARA 1004.

7 Finance Act 1996 s 54B(1) (s 54B added by SI 2009/56). As to the meaning of 'appeal tribunal' see PARA 1003 note 1.

8 Finance Act 1996 s 54B(2) (as added: see note 7).

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1007. Review by Her Majesty's Revenue and Customs.

Her Majesty's Revenue and Customs ('HMRC') must review a decision¹ if they have offered a review of the decision² and P³ notifies them accepting the offer within 30 days from the date of the document containing the notification of the offer⁴. P may not notify acceptance of the offer if P has already appealed⁵ to the appeal tribunal⁶.

HMRC must also review a decision if a person other than P notifies them⁷ requiring a review⁸.

HMRC are not required to review a decision if P or another person has appealed⁹ to the appeal tribunal in respect of the decision¹⁰.

1 As to the nature of a review see PARA 1010.

2 Ie under the Finance Act 1996 s 54A: see PARA 1006.

3 See PARA 1006.

4 Finance Act 1996 s 54C(1) (s 54C added by SI 2009/56).

5 Ie under the Finance Act 1996 s 54G: see PARA 1004.

6 Finance Act 1996 s 54C(2) (as added: see note 4). As to the meaning of 'appeal tribunal' see PARA 1003 note 1.

7 Ie under the Finance Act 1996 s 54B: see PARA 1006.

8 Finance Act 1996 s 54C(3) (as added: see note 4).

9 Ie under the Finance Act 1996 s 54G: see PARA 1004.

10 Finance Act 1996 s 54C(4) (as added: see note 4).

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1008. Extensions of time.

If Her Majesty's Revenue and Customs ('HMRC') have offered P¹ a review of a decision², they may within the relevant period³ notify P that the relevant period is extended⁴. If another person may require⁵ HMRC to review a matter, they may within the relevant period notify that person that the relevant period is extended⁶.

If notice is given the relevant period is extended to the end of 30 days from the date of the notice or any other date set out in the notice or a further notice⁷.

1 See PARA 1006.

2 Ie under the Finance Act 1996 s 54A: see PARA 1006. As to the nature of a review see PARA 1010.

3 The 'relevant period' means (1) the period of 30 days referred to in the Finance Act 1996 s 54C(1) (see PARA 1007) or, in a case within s 54D(2) (see the text and note 6), in s 54B(2) (see PARA 1006); or (2) if notice under these provisions has previously been given, the period in head (1) as extended (or most recently extended) in accordance with s 54D(3) (see the text and note 7): s 54D(4) (s 54D added by SI 2009/56).

4 Finance Act 1996 s 54D(1) (as added: see note 3).

5 Ie under the Finance Act 1996 s 54B: see PARA 1006.

6 Finance Act 1996 s 54D(2) (as added: see note 3).

7 Finance Act 1996 s 54D(3) (as added: see note 3).

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1009. Review out of time.

If Her Majesty's Revenue and Customs ('HMRC') have offered a review of a decision¹ and P² does not accept the offer within the time allowed³ or a person who requires a review⁴ does not notify HMRC within the time allowed⁵, HMRC must review the decision⁶ if:

- 372 (1) after the time allowed, P or the other person notifies HMRC in writing requesting a review out of time;
- 373 (2) HMRC are satisfied that P or the other person had a reasonable excuse for not accepting the offer or requiring the review within the time allowed; and
- 374 (3) HMRC are satisfied that P or the other person made the request in head (1) without unreasonable delay after the excuse had ceased to apply⁷.

HMRC are not required to review a decision if P or another person has appealed⁸ to the appeal tribunal⁹ in respect of the decision¹⁰.

1 Ie under the Finance Act 1996 s 54A: see PARA 1006. As to the nature of a review see PARA 1010.

2 See PARA 1006.

3 Ie under the Finance Act 1996 s 54C(1) (as added: see PARA 1007) or s 54D(3) (as added: see PARA 1008).

4 Ie under the Finance Act 1996 s 54B: see PARA 1006.

5 Ie under the Finance Act 1996 s 54B (as added: see PARA 1006) or s 54D(3) (as added: see PARA 1008).

6 Ie under the Finance Act 1996 s 54C: see PARA 1007.

7 Finance Act 1996 s 54E(1)(2) (s 54E added by SI 2009/56).

8 Ie under the Finance Act 1996 s 54G: see PARA 1004.

9 As to the meaning of 'appeal tribunal' see PARA 4003 note 1.

10 Finance Act 1996 s 54E(3) (as added: see note 7).

Halsbury's Laws of England/LANDFILL TAX (VOLUME 61 (2010) 5TH EDITION)/14. APPEALS AND REVIEWS/(2) REVIEWS/1010. Nature of a review.

1010. Nature of a review.

The following applies if Her Majesty's Revenue and Customs ('HMRC') are required to undertake a review¹.

The nature and extent of a review are to be such as appear appropriate to HMRC in the circumstances². The review must take account of any representations made by P³ or the other person⁴ at a stage which gives HMRC a reasonable opportunity to consider them⁵.

The review may conclude that the decision is to be upheld, varied or cancelled⁶. HMRC must give P or the other person notice of the conclusions of the review and their reasoning within a period of 45 days beginning with the relevant date⁷ or such other period as HMRC and P or the other person may agree⁸. Where HMRC are required to undertake a review but do not give notice of the conclusions within the specified time period, the conclusion of the review is deemed to be that the decision is upheld⁹. HMRC must notify the appellant of the deemed conclusion¹⁰.

1 Finance Act 1996 s 54F(1) (s 54F added by SI 2009/56). As to the requirement for HMRC to undertake a review see the Finance Act 1996 ss 54C, 54E; and PARAS 1007, 1009.

2 Finance Act 1996 s 54F(2) (as added: see note 1). For this purpose, HMRC must, in particular, have regard to steps taken before the beginning of the review by HMRC in reaching the decision and by any person in seeking to resolve disagreement about the decision: s 54F(3) (as so added).

3 See PARA 1006.

4 See PARAS 1006, 1008.

5 Finance Act 1996 s 54F(4) (as added: see note 1).

6 Finance Act 1996 s 54F(5) (as added: see note 1).

7 The 'relevant date' means (1) in a case falling within the Finance Act 1996 s 54A (see PARA 1006), the date HMRC received P's notification accepting the offer of a review; (2) in a case falling within s 54B (see PARA 1006), the date HMRC received notification from another person requiring a review; or (3) in a case falling within s 54E (see PARA 1009), the date on which HMRC decided to undertake the review: s 54F(7) (as added: see note 1).

8 Finance Act 1996 s 54F(6) (as added: see note 1).

9 Finance Act 1996 s 54F(8) (as added: see note 1).

10 Finance Act 1996 s 54F(9) (as added: see note 1).